
Consolidated Guidance About Materials Licenses

Guidance About Changes of Control and About Bankruptcy
Involving Byproduct, Source, or Special Nuclear Materials
Licenses

Final Report

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ABSTRACT

As part of its redesign of the material licensing process, NRC is consolidating and updating numerous guidance documents into a single comprehensive repository, as described in NUREG-1539, "Methodology and Findings of the NRC's Material Licensing Process Redesign," dated April 1996, and draft NUREG-1541, "Process and Design for Consolidating and Updating Materials Licensing Guidance," dated April 1996. NUREG-1556, Volume 15, "Consolidated Guidance about Materials Licenses: Guidance About Change of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated November 2000, is intended for use by applicants, licensees, and NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in NRC Information Notice 89-25, Rev. 1: "Unauthorized Transfer of Ownership or Control of Licensed Activities"; NRC Information Notice 97-30: "Control of Licensed Material During Reorganizations, Employee-Management Disagreements, and Financial Crises"; and Policy and Guidance Directives 1-13, Revision 2, "Processing Material License Applications Involving Change of Ownership"; and 8-11, "NMSS Procedures for Reviewing Declarations of Bankruptcy." Upon publication in final form, the guidance in this report will supersede Policy and Guidance Directive 8-11. This report takes a more risk-informed, performance-based approach to evaluating changes of control or bankruptcy of byproduct, source, and special nuclear material licensees, reducing the information (amount and level of detail) needed to properly inform NRC of a change of control or bankruptcy. When published, this final report should be used as guidance in preparing notifications of changes of control or bankruptcy. NRC will use this final report as guidance in reviewing these notifications.

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FOREWORD

The United States Nuclear Regulatory Commission (NRC) is using Business Process Redesign (BPR) techniques to redesign its materials licensing process. This effort is described in NUREG-1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign," dated April 1996. A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG series of reports. Below is a list of volumes currently included in the NUREG-1556 series:

Vol. No.	Volume Title	Status
1	Program-Specific Guidance About Portable Gauge Licenses	Final Report
2	Program-Specific Guidance About Industrial Radiography Licenses	Final Report
3	Applications for Sealed Source and Device Evaluation and Registration	Final Report
4	Program-Specific Guidance About Fixed Gauge Licenses	Final Report
5	Program-Specific Guidance About Self-Shielded Irradiator Licenses	Final Report
6	Program-Specific Guidance About 10 CFR Part 36 Irradiator Licenses	Final Report
7	Program-Specific Guidance About Academic, Research and Development, and Other Licenses of Limited Scope	Final Report
8	Program-Specific Guidance About Exempt Distribution Licenses	Final Report
9	Program-Specific Guidance About Medical Use Licenses	Draft
10	Program-Specific Guidance About Master Materials Licenses	Draft
11	Program-Specific Guidance About Licenses of Broad Scope	Final Report
12	Program-Specific Guidance about Possession Licenses for Manufacturing and Distribution	Draft
13	Program-Specific Guidance About Commercial Radiopharmacy Licenses	Final Report
14	Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study Licenses	Final Report
15	Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses	Final Report

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Vol. No.	Volume Title	Status
16	Program-Specific Guidance About Licenses Authorizing Distribution to General Licensees	Draft
17	Program-Specific Guidance About Special Nuclear Material of Less Than Critical Mass Licenses	Final Report
18	Program-Specific Guidance About Service Provider Licenses	Final Report
19	Guidance for Agreement State Licensees About NRC Form 241 “Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters” and Guidance For NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)	Final Report
20	Guidance About Administrative Licensing Procedures	Draft

The current document, NUREG-1556, Vol. 15, “Consolidated Guidance about Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses,” dated November 2000, is the fifteenth guidance document developed for the new process. It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in Policy and Guidance Directives 1-13, Revision 2, “Processing Material License Applications Involving Change of Ownership”; and 8-11, “NMSS Procedures for Reviewing Declarations of Bankruptcy.” In addition, this report also contains pertinent information found in Information Notices, as listed in Appendix L.

Since this report takes a risk-informed, performance-based approach to evaluating changes of control or bankruptcy of byproduct, source, and special nuclear material licensees, it clarifies the type and in some cases reduces the amount of information needed from a licensee seeking to provide NRC with the required notification regarding a change of control or bankruptcy.

A team composed of NRC staff from Headquarters and the Region I, II and III offices prepared this document, drawing on their collective experience in radiation safety in general and as specifically applied to changes of control and bankruptcies. Representatives of NRC’s Office of the General Counsel provided legal perspectives and specific examples of changes of control that would require prior notification and consent of NRC.

NUREG-1556, Vol.15, “Consolidated Guidance about Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses,” was published in May 1999 as a Draft Report for Comment. The comment period officially closed on October 7, 1999. Any comments received after October 7, 1999 would have been considered if practicable. As of March 29, 2000, no public comments had been received on the draft report.

This document represents a step in the transition from the current paper-based licensing process to a new electronic licensing process. This document is available on the Internet at the following address: <<http://www.nrc.gov/NRC/NUREGS/SR1556/V15/index.html>>.

NUREG-1556, Vol. 15, "Consolidated Guidance about Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated November 2000, is not a substitute for NRC regulations, and compliance is not required. The approaches and methods described in this final report will be used as guidance by NRC.

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ABBREVIATIONS

ABI	American Bankruptcy Institute
AEA	Atomic Energy Act
BPR	Business Process Redesign
BRT	Bankruptcy Review Team
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
DFP	Decommissioning Funding Plan
DOE	Department of Energy
DOJ	Department of Justice
DWM	Division of Waste Management
EPA	Environmental Protection Agency
F/A	Certification of Financial Assurance for Decommissioning
GPO	Government Printing Office
IMC	Inspection Manual Chapter
IMNS	Division of Industrial and Medical Nuclear Safety
IN	Information Notice
LTSP	Long-Term Surveillance Plan
MML	Master Materials License
NIST	National Institute of Standards and Technology
NMSS	Office of Nuclear Material Safety and Safeguards
NRC	Nuclear Regulatory Commission
OC	Office of the Controller
OCFO	Office of the Chief Financial Officer
OCR	Optical Character Reader
OE	Office of Enforcement
OGC	Office of the General Counsel
OMB	Office of Management and Budget
QA	Quality Assurance
P&GD	Policy and Guidance Directive
RG	Regulatory Guide
RSO	Radiation Safety Officer
SI	International System of Units (abbreviated SI from the French Le Système Internationale d'Unités)
std	Standard
STP	Office of State and Tribal Programs
TAR	Technical Assistance Request
U.S.C.	United States Code

1 PURPOSE OF REPORT

As part of its redesign of the material licensing process, NRC is consolidating and updating numerous guidance documents into a single comprehensive set of documents, as described in NUREG-1539, “Methodology and Findings of the NRC’s Material Licensing Process Redesign,” dated April 1996, and draft NUREG-1541, “Process and Design for Consolidating and Updating Materials Licensing Guidance,” dated April 1996.

NUREG-1556, Volume 15, “Consolidated Guidance about Materials Licenses: Guidance About Change of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses,” dated November 2000, is the fifteenth guidance document developed for the new process. It is intended for use by license applicants, licensees, and NRC staff, and will also be available to Agreement States. This report provides important information to persons who own or manage activities that are licensed by NRC. It contains guidance for licensees and in some cases, license applicants to use in preparing a notification to NRC of a change of control or bankruptcy. It also contains NRC criteria for evaluating such a notification and determining whether a new or amended license is needed. This report is organized into specific sections, discussing changes of control (Chapter 5) and bankruptcy (Chapter 6). Chapters 7 through 13 provide specific information for licensees or applicants to use should it be necessary to apply for a new or amended license as the result of a change of control or bankruptcy. Chapter 14 provides information for properly protecting sensitive information such as financial data submitted to NRC. Information about the specific requirements for particular uses of licensed materials may be found in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents.

For the purpose of this document, NRC is generally using the term “change” rather than the statutory term “transfer” to describe the variety of events that could require prior notification to, and written consent of, NRC.

Provisions of the Atomic Energy Act and regulations in Title 10 of the Code of Federal Regulations require that NRC licensees notify NRC of any changes of control or bankruptcy.

The Atomic Safety and Licensing Appeal Board has stated, “[C]ontrol of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used.” The Appeal Board went on to note, “In the instance of a corporate Part 30 or Part 50 licensee, that control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.” (*Safety Light Corporation* (Bloomsburg Site Decommissioning), ALAB-931, 31 NRC 350 (1990)).

Control over licensed activities can be construed as the authority to decide when and how that license (licensed material and/or activities) will be used. A change of ownership may be an example of a change of control if authority over the license has transferred from one person to

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another. The transfer of stock or other assets is not necessarily a change of control. The central issue is whether the authority over the license has changed.

The Atomic Energy Act, as well as NRC regulations in Title 10 of the Code of Federal Regulations, further state that no NRC license nor any right under an NRC license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any NRC license to any person, unless NRC has found, after securing full information, that the transfer is in accordance with the provisions of the Act and has given its consent in writing.

Persons who are in the process of applying for an NRC license and who do not already hold one or more other NRC licenses are not subject to NRC regulations with regard to bankruptcy or changes of control. However, applicants must advise NRC of any change of control or bankruptcy that results in changes to the information being reviewed by NRC that would impact the basis on which NRC would eventually issue the license.

NRC is not only concerned with change of control as it occurs in private business, but also as it affects Government agencies. Specific considerations for Government agencies are addressed in Chapter 5.

The regulations are clear that control of licensed activities cannot be transferred without prior written consent from NRC. It is not NRC's intent to interfere with the business decisions of licensees. However, it is necessary for licensees to notify NRC sufficiently before the actual change to allow time for appropriate review, whenever decisions are being considered that involve changes of control. NRC's focus is on the health and safety aspects, not on the financial intricacies, of the proposed transaction. NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place. NRC is required by law to ensure that the public's health and safety are not compromised and therefore must be confident that when a licensee's program is undergoing a change of control, all efforts are made to ensure that the radiation safety aspects of the program are not degraded.

Although the burden of notification is on the existing licensee, it may also be necessary for the transferee or the successor to provide supporting information or to independently coordinate the change of control with the appropriate NRC office.

In the case of bankruptcy, NRC regulations require that a licensee notify NRC in writing immediately following the filing of a voluntary or involuntary petition under the Bankruptcy Code by or against the licensee, or an entity controlling the licensee or listing the license or licensee as property of the estate, or an affiliate of the licensee. This notification must indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

No changes of control or license terminations will be authorized until all information or records concerning decommissioning of the facility, radiation doses to the public, and waste disposal (such as releases to sewers, incineration, radioactive spills, and on-site burials) have been transferred to the new licensee, if licensed activities will continue at the same location, or to NRC if the license is to be terminated.

This document is intended to be used for all NRC byproduct, source, and special nuclear material licenses that are licensed in accordance with Title 10 of the Code Federal Regulations, Parts 30, 31, 40, and 70. It does not address bankruptcy or change of control for licenses issued under Parts 61, 72, 76, or 110. This document provides important information, including citations of relevant case law regarding bankruptcy and the various forms of changes of control that may take place. It is important to understand that each instance of bankruptcy or change of control is unique and must be evaluated on a case-by-case basis. NRC and licensee staff involved in these matters are strongly encouraged to become familiar with the guidance in this document and to consult with qualified technical and legal experts when questions regarding a particular case are raised.

Changes in a licensee's program resulting from a change of control or bankruptcy may result in the need to amend the existing license. In some cases, NRC may require the transferee or successor to apply for a new license. 10 CFR 30.32 and 10 CFR 40.31 state, in part, that a person may file an application for a new specific license on NRC Form 313, "Application for Material License." 10 CFR 30.38 and 10 CFR 40.31 require, in part, that applications for amendment of a license be filed on Form NRC 313. The licensee must specify how the license is to be amended and the grounds for the amendment.

This report identifies general information that is needed to complete NRC Form 313 (Appendix A), "Application for Material License," for amending licenses as the result of a change of control or bankruptcy. Licensees should also refer to program-specific guidance found either in the NUREG-1556 series or other appropriate regulatory documents for specific information that must be included in their application for a new or amended license. The information collection requirements in 10 CFR Parts 30, 31, 40 and 70 and NRC Form 313 have been approved under the Office of Management and Budget (OMB) Clearance Nos. 3150-0017, 3150-0016, 3150-0020, 3150-0009, and 3150-0120, respectively.

Applicants for, and holders of, licenses authorizing possession and use of special nuclear material should refer to 10 CFR 70.22 and 10 CFR 70.34 regarding the regulatory requirements for applying for a new or an amended special nuclear material license.

Note: The text of these and other NRC regulations may be found at <<http://www.nrc.gov/NRC/CFR/index.html>>.

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Persons using certain generally licensed devices in accordance with 10 CFR Parts 31, 40, and 70 are required to notify and receive the consent of NRC before the change of control of licensed materials. Additional information about these requirements may be found in Appendix B.

The format within this document for each item of legal or technical information is as follows:

- Regulations – references the regulations applicable to the item;
- Criteria – outlines the criteria used to judge the adequacy of the information provided by the licensee;
- Discussion – provides additional information on the topic sufficient to meet the needs of most readers; and
- Response from Licensee – provides suggested response(s), offers the option of an alternative reply, or indicates that no response is needed on that topic during the licensing process.

Notes and References are self-explanatory and may not be found for each item on NRC Form 313.

NRC Form 313 does not have sufficient space for applicants to provide full responses to Items 5 through 11; as indicated on the form, the answers to those items are to be provided on separate sheets of paper and submitted with the completed NRC Form 313.

2 AGREEMENT STATES

Certain states, called Agreement States (see Figure 2.1), have entered into agreements with NRC that give them the authority to license and inspect byproduct, source, or special nuclear materials used or possessed within their borders. Any applicant other than a Federal agency who wishes to possess or use licensed material in one of these Agreement States needs to contact the responsible officials in that State for guidance on preparing an application; file these applications with State officials, not with NRC.

In general, Agreement State regulations are similar to NRC regulations. However, since significant differences may exist, Agreement State licensees should contact their respective state radiation control program offices for specific regulatory requirements and guidance regarding notification of change of control or bankruptcy.

In the special situation of work at Federally-controlled sites in Agreement States, it is necessary to know the jurisdictional status of the land in order to determine whether NRC or the Agreement State has regulatory authority. NRC has regulatory authority over land determined to be “exclusive Federal jurisdiction,” while the Agreement State has jurisdiction over non-exclusive Federal jurisdiction land. Licensees are responsible for finding out, in advance, the jurisdictional status of the specific areas where they plan to conduct licensed operations. NRC recommends that licensees ask their local contact for the Federal agency controlling the site (e.g., contract officer, base environmental health officer, district office staff) to help determine the jurisdictional status of the land and to provide the information in writing, so that licensees can comply with NRC or Agreement State regulatory requirements, as appropriate. Additional guidance on determining jurisdictional status is found in All Agreement States Letter, SP-96-022, dated February 16, 1996, which is available from NRC upon request.

Table 2.1 provides a quick way to check on which agency has regulatory authority.

Table 2.1 Who Regulates the Activity?

Applicant and Proposed Location of Work	Regulatory Agency
Federal agency regardless of location (except that Department of Energy [DOE] and, under most circumstances, its prime contractors, are exempt from licensing [10 CFR 30.12])	NRC
Non-Federal entity in non-Agreement State, U.S. territory, or possession	NRC
Non-Federal entity in Agreement State at non-Federally controlled site	Agreement State
Non-Federal entity in Agreement State at Federally-controlled site <i>not</i> subject to exclusive Federal jurisdiction	Agreement State
Non-Federal entity in Agreement State at Federally-controlled site subject to exclusive Federal jurisdiction	NRC

Locations of NRC Offices and Agreement States

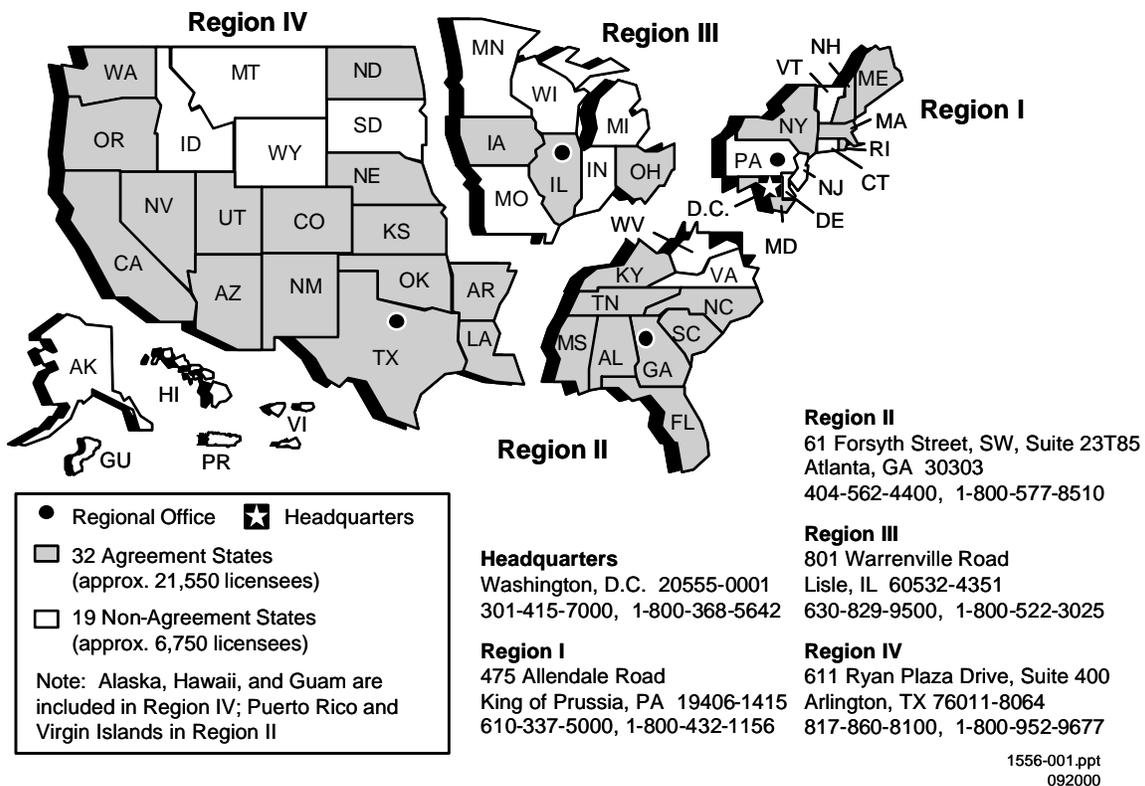


Figure 2.1 U.S. Map. Location of NRC Offices and Agreement States.

Reference: A current list of Agreement States (including names, addresses, and telephone numbers of responsible officials) is available by choosing “Directories” on the NRC Office of State and Tribal Programs’ (STP’s) Home Page <<http://www.hsr.d.ornl.gov/nrc/home.htm>>. As an alternative, request the list from NRC’s Regional Offices.

All Agreement States Letter, SP-96-022, dated February 16, 1996, is available on STP’s Home Page <<http://www.hsr.d.ornl.gov/nrc/home.htm>>; choose “NRC-State Communications,” then choose “All of the Above,” and follow the directions for submitting a query for “SP96022.” As an alternative, request the letter from STP by calling NRC toll-free number (800) 368-5642, extension 415-3340.

3 MANAGEMENT RESPONSIBILITY

NRC recognizes that effective radiation safety program management is vital to achieving safe and compliant operations. NRC believes that consistent compliance with its regulations provides reasonable assurance that licensed activities will be conducted safely. NRC also believes that effective management will result in increased safety and compliance.

“Management” refers to the processes for conducting and controlling the radiation safety program and to the individuals who are responsible for those processes and who have authority to provide necessary resources to achieve regulatory compliance.

It is the licensee’s obligation to keep the license current. Should a change of control or a bankruptcy action result in a change to the licensee’s program, the licensee must amend the license to reflect that change. If any of the information provided in the original application is to be modified or changed, the licensee must submit an application for a license amendment before the change takes place. Also, to continue the license after its expiration date, the licensee must submit an application for a license renewal at least 30 days before the expiration date (10 CFR 2.109, 10 CFR 30.36(a), 10 CFR 40.42(a), 10 CFR 70.38(a)).

Using the suggested wording of responses and committing to using the model procedures in the program-specific volume in the NUREG-1556 series (or other appropriate regulatory guidance) will expedite NRC’s review.

Persons applying for an initial license should update and modify their pending applications if they are undergoing a change of control or bankruptcy. NRC license reviewers should consult with appropriate technical, legal, and management staff in each of these cases.

Generally, licensee or applicant management has a responsibility for all aspects of the radiation safety program including, but not limited to, the following:

- Radiation safety, security and control of radioactive materials, and compliance with regulations;
- Completeness and accuracy of the radiation safety records and all information provided to NRC (10 CFR 30.9, 10 CFR 40.9, 10 CFR 70.9);
- Knowledge about the contents of the license and application;
- Meticulous compliance with current NRC regulations and the licensee’s operating and emergency procedures;
- Commitment to provide adequate resources (including space, equipment, personnel, time, and, if needed, contractors) to the radiation protection program to ensure that the public and workers are protected from radiation hazards and that meticulous compliance with regulations is maintained;

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- Selection and assignment of a qualified individual to serve as the Radiation Safety Officer (RSO) for licensed activities;
- Prohibition against discrimination of employees engaged in protected activities (10 CFR 30.7, 10 CFR 40.7, 10 CFR 70.7);
- Commitment to provide information to employees regarding the employee protection and deliberate misconduct provisions in 10 CFR 30.7, 10 CFR 40.7, or 10 CFR 70.7; and 10 CFR 30.10, 10 CFR 40.10, or 10 CFR 70.10, respectively;
- Obtaining NRC's prior written consent before changing control of the license;
- Notifying the appropriate NRC Regional Administrator in writing, immediately following filing of petition for voluntary or involuntary bankruptcy.

As discussed above and elsewhere in this report, licensee (and in some cases, applicant) management has specific responsibilities with regard to changes of control or bankruptcy. NRC regulations require that licensees notify NRC of proposed changes of control prior to the transfer of licensed activities. Control of licensed activities cannot be changed without prior written consent from NRC. Licensees must notify NRC immediately upon filing for bankruptcy. NRC expects licensee management to conduct its licensed activities in compliance with NRC regulations and the terms and conditions of the license. Therefore, licensees are expected to notify NRC of a proposed change of control in a timely manner, allowing NRC enough time to carry out its statutory mandate of ensuring that licensed materials are adequately safeguarded and that public health and safety is protected.

Licensee (and applicant) management is strongly cautioned that cases where change of control, such as change of ownership, occur without NRC's prior written consent will be considered to be violations of the provisions of 10 CFR 30.34 (or the similar provisions of 10 CFR 40.46, and 10 CFR 70.36). Such cases will be referred to the inspection staff and/or the Office of Investigations, as appropriate. Failure to receive the required NRC approval prior to a change of control of licensed activities may be considered to be a Severity Level III violation warranting escalated enforcement action. Escalated enforcement action may include the issuance of orders, the imposition of monetary civil penalties, or the modification, suspension, or revocation of the license against one or both of the parties involved. The willful failure to obtain prior NRC approval of the change of control may further result in referrals to the Department of Justice for consideration of criminal prosecution under the provisions of the Atomic Energy Act.

Past NRC enforcement actions against licensees include:

- A fixed gauge licensee was issued an order (effective immediately) that suspended the license and required the transfer of licensed materials to an authorized party following the licensee's improper transfer of control of the gauges to an unlicensed company.

- NRC imposed a \$20,000 civil penalty against a licensee for improperly transferring three byproduct and source material licenses and licensed materials to another entity. NRC characterized the violation as Severity Level II and escalated the base value of the civil penalty because the licensee had a prior opportunity to prevent the violations. Prior to the transfer, an NRC inspector had informed the licensee's Radiation Safety Officer of the proper procedures for transferring licensed materials.

It is not the intent of NRC to interfere with the business decisions of licensees. NRC's focus is on the health and safety aspects, not on the financial intricacies, of the proposed transaction. NRC will require licensees to submit only such business information as is necessary to permit the Commission to determine whether a change of control will take place. NRC is required by law to ensure that public health and safety is not compromised and to be confident that when a licensee's program is undergoing a change of control, all efforts are made to ensure that the performance of the radiation safety aspects of the program is not degraded.

10 CFR 2, Subpart M describes the requirements for making documents related to changes of control publicly available. NRC recognizes that information regarding a proposed change of control may be extremely sensitive and that the public release of such information may have an adverse impact on the licensee, as well as other persons potentially involved in the change of control. Licensees, or other persons wishing to protect sensitive information regarding proposed changes of control, should request that sensitive information be protected in accordance with 10 CFR 2.790. 10 CFR 2.790 specifies the procedures and requirements for the protection of sensitive information from disclosure. Section 13 of this report further describes how sensitive information may be protected from public disclosure.

For information on NRC inspection, investigation, enforcement, and other compliance programs, see the current version of "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, and the appropriate NRC Inspection Manual chapters. NUREG-1600 is available electronically at <<http://www.nrc.gov/oe>>. For hard copies of NUREG-1600 and NRC Inspection Manual chapters, see the Notice of Availability (on the inside front cover of this report).

4 APPLICABLE REGULATIONS

It is the applicant's or licensee's responsibility to have copies of, and to abide by, the most recent applicable regulations.

The following Parts of 10 CFR, Chapter I contain regulations applicable to change of control and bankruptcy issues:

- 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders"
- 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material"
- 10 CFR Part 31, "General Domestic Licenses for Byproduct Material"
- 10 CFR Part 40, "Domestic Licensing of Source Material"
- 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material"
- 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended"
- 10 CFR Part 171, "Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC."

To request copies of the above documents, call the Government Printing Office's (GPO's) order desk in Washington, DC at (202) 512-1800. Order the two-volume bound version of Title 10, Code of Federal Regulations, Parts 0-50 and 51-199 from the GPO, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954. You may also contact the GPO electronically at <<http://www.gpo.gov>>. Request single copies of the above documents from NRC's Regional Offices (see Figure 2.1 for addresses and telephone numbers). Note that NRC publishes amendments to its regulations in the *Federal Register*.

NRC regulations are also available electronically at NRC's Internet web site at <<http://www.nrc.gov/NRC/CFR.html>>.

5 CHANGE OF CONTROL

Regulations: 10 CFR 30.34(b); 10 CFR 31.2; 10 CFR 40.46; 10 CFR 70.36.

Criteria: The regulations require that “No license issued or granted pursuant to the regulations, nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.” Therefore, control of licenses cannot be transferred without the prior written consent of the Commission. These regulations apply to specific licensees, as well as certain general licensees.

This requires that licensees notify the Commission that they are undergoing a possible change of control. While this notification is not required within a certain time frame, NRC needs adequate time to review the response to ensure that the transfer is in accordance with the provisions of the Act. Once notified, NRC will ask that licensees submit the details of the transaction as described in Sections 5.1 through 5.6.

Definition of Control

In *Safety Light Corporation* (Bloomsburg Site Decommissioning), ALAB-931, 31 NRC 350 (1990), the Atomic Safety and Licensing Appeal Board stated, “[C]ontrol of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used.” *Id.* at n. 46.

The Board went on to note, “In the instance of a corporate Part 30 *or* Part 50 licensee, that control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.” *Id.* at 367 (emphasis in original).

Control over licensed activities can be construed as the authority to decide when and how that license (licensed material and/or activities) will be used. A change of ownership may be an example of a change of control, depending on whether the authority over the license has transferred from one person to another. The transfer of stock or other assets is not necessarily a change of control. The central issue is whether the authority over the license has changed. Examples of transactions that would and would not constitute changes of control may be found in Appendix D.

NRC is not only concerned with change of control as it occurs in private business, but also as it affects Government agencies. For Government agencies, the lowest organizational level listed in Item 1 of the license is considered to be the licensee. Therefore, NRC should be informed whenever a change in ownership or control at the lowest organizational level listed on the license occurs.

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Some agencies possess a Master Materials License (MML), which authorizes a single organization within the agency to issue permits authorizing the use of licensed materials by individuals or organizations at multiple sites. NRC does not review or approve new MML permit holders and/or locations before use. A change in authority over a permit within the scope of a single master materials license would not constitute a change of control requiring the prior written consent of the Commission. However, a change in control from the MML licensee to another organization would require the Commission's prior written consent. For example, change of control over a medical center from one Government agency to another agency would require the Commission's prior written consent.

In the area of materials licensing, there are no categorical foreign ownership, control, or domination limitations. However, under Sections 57c, 63b, and 82b of the AEA, NRC must make a finding that issuance of the license for special nuclear material, source material, or byproduct material would not be "inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public." The Commission must make the same finding when consenting to a change of control. As a part of that determination, NRC will consider foreign ownership, control, and domination.

Although NRC has never adopted any explicit criteria for determining whether a particular transaction will be "inimical to the common defense and security," the Commission has historically focused on a relationship between a potential licensee and other entities involved in the transaction that could lead to the ultimate power of a foreign entity to direct the actions of the licensees with regard to licensed activities.

In the area of materials licenses, indirect control by a foreign entity of 100% of the licensee may be permissible, provided insulation measures are taken to protect the national security. Such measures include, but are not limited to, management directives shielding directors or board members from decisions involving classified or secret information, or from the management or control of special nuclear material. For example, one materials licensee merged with a foreign-owned corporation, ultimately becoming a wholly-owned subsidiary of that foreign entity. Based upon the licensee's commitments to maintaining its existing Headquarters, management, corporate structure, key personnel, and licensed activities, the staff found that the change of control of the licenses was not inimical to the common defense and security, did not present an unreasonable risk to the public health and safety, and was in accordance with the AEA.

In all cases, determining whether a change of control has taken place is the agency's responsibility. Whenever a change in ownership or control may occur, the licensee must so inform NRC.

Discussion: It is not the intent of NRC to interfere with the business decisions of licensees. NRC's focus is on the health and safety aspects, not on the financial intricacies, of the proposed transaction. NRC will require licensees to submit only such business information as is necessary to permit the Commission to determine whether a change of control will take place. NRC is

required by law to ensure that the public's health and safety and the common defense and security are not compromised and to be confident that when a licensee's program is undergoing a change of control, all efforts are made to ensure that the radiation safety aspects of the program are not degraded.

Response from the Licensee:

- Notification of a Change of Control with adequate time for NRC review;
- Information described in Sections 5.1 through 5.6.

5.1 DESCRIPTION OF TRANSACTION

Regulation: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

Criteria: Prior to approval of a change of control, NRC requires a complete, clear description of the transaction.

Discussion: The required description includes, but is not limited to, any transfer of stocks or assets, or mergers. This description will enable legal counsel to differentiate between name changes and changes of control, when necessary.

The licensee needs to include the new name of the licensed organization or state that there has been no name change. If appropriate, the licensee should include the new licensee contact and telephone number(s) to facilitate communications.

Response from the Licensee:

- Description of transaction;
- New name, if applicable;
- New licensee contact(s), including names and phone numbers.

5.2 CHANGES OF PERSONNEL

Regulation: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

Criteria: Prior to approval of a change of control, NRC requires that changes in personnel be documented, reviewed, and approved.

Discussion: Changes in personnel that need to be documented include individuals having control over licensed activities. This may include, in some cases, officers of a corporation or

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other management individuals who are listed on the license or referred to in the supporting documentation. This would also include any changes in personnel such as the Radiation Safety Officer, authorized users, or any other persons identified on the license or in the license application as having responsibility for radiation safety or authorized to use licensed material. Changes of personnel, as used in this report, does not include notifications regarding new authorized users made in accordance with 10 CFR 35.14.

As with any change in personnel listed on a license, pertinent information with regard to training, experience and qualifications applicable to the type of use will be required. The licensee should include applicable information concerning the qualifications, training, and responsibilities of any new individuals not previously listed on the current license or referred to in the supporting documentation. The specific information required will be found in the respective program-specific guidance for the type of operation in which a particular licensee is engaged, or it may be obtained by contacting the appropriate Headquarters or Regional license reviewer.

Response from the Licensee:

- Training and experience of *new* individuals to be listed on the NRC license.

Licensees or applicants should provide information about the training and experience of personnel relative to the licensed material requested in the application. Extraneous information, such as unrelated lists of publications, research grants, and committee and society memberships, should not be submitted. Licensees should also avoid providing personal information such as home addresses or telephone numbers, Social Security numbers, marital status, names of spouse and children, or age. Submittal of unrelated material serves only to slow the review process.

5.3 CHANGES OF LOCATION, EQUIPMENT & PROCEDURES

Regulation: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

Criteria: Prior to the approval of a change of control, the licensee needs to submit a complete description of any planned changes in location, facilities, equipment, or procedures.

Discussion: Provide a detailed description of any changes in the licensees' location(s) of use, facility description, equipment or procedures (i.e., changes in operating or emergency procedures) that would normally require a license amendment. Include any changes in organization that may not be identified in Section 5.2, Changes in Personnel.

The location must be described if the licensee is adding a place of use. A description of the contaminated condition of the facility, if any, is required if the licensee is removing a place of use.

Refer to Section 5.6 for a more detailed description of the information needed. Any changes in the facilities where licensed material will be used or stored must be described. If equipment used in licensed activities is required to be described by license condition or regulation, or if information regarding this equipment is requested by appropriate licensing guidance, a description of all equipment changes should be provided. Changes in procedures, including routine operating and emergency procedures, must be reviewed to ensure that they are adequate for the types and uses described on the license. Changes in personnel that would require a license amendment, even without the change of ownership, must be submitted as requested by appropriate licensing guidance.

Response from the Licensee:

- Describe changes in the organization that exercises control over the licensed program.
- Describe changes in place of use, including potentially affected adjacent areas, as required.
- Describe changes in facilities where licensed material is to be used or stored.
- Describe changes in equipment to be used in the licensed program.
- Submit relevant procedural changes.
- Describe changes in personnel, particularly those requiring a license amendment or notification regardless of the change of control.

Note: As previously stated, this guidance is not program-specific; therefore, any changes in the licensed program should be prepared and reviewed using the program-specific guidance, such as the NUREG-1556 series specific to the type of use or any other pertinent guidance published by NRC. Any questions should be directed to the Headquarters or Regional Office that routinely handles the licensing and/or inspection of the licensed program.

5.4 SURVEILLANCE RECORDS

Regulation: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

Criteria: Prior to the approval of a change of control, licensees or applicants must submit a review of the status of all applicable surveillance requirements and records. This should include an indication of whether the surveillance program is current and if it will be current at the time of transfer.

Discussion: Typical surveillance requirements include leak tests, physical inventories, ventilation measurements, and conductivity tests. Surveillance requirements specific to the types of use may be found in the license, the regulations, the appropriate NUREG-1556 or any other pertinent guidance published by NRC. The licensee must review any and all pertinent surveillance records to determine if they are current and ensure that they will be current at the time of transfer, or

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include an explanation if this is not to be the case. The licensee may perform the surveillance as authorized by its license. The licensee may also choose to have surveillance items performed by another party such as a contractor or the transferee, as authorized by the license, and if agreeable to both parties. It should be noted that the requirement for surveillance items in the regulations or the license is not waived due to a change of control.

Response from the Licensee:

- Submit a statement that all required surveillance has been performed, documented and reviewed, including the results, if appropriate.
- If surveillance items are not or will not be completed, the reasons, any corrective actions, and/or the date these corrective actions will be completed, should be submitted to NRC.

Note: As previously stated, this guidance is not program-specific; therefore, any changes in the licensed program should be prepared and reviewed using the program-specific guidance such as the NUREG-1556 series specific to the type of use or any other pertinent guidance published by NRC. Any questions should be directed to the Headquarters or Regional Office that routinely handles the licensing and/or inspection of the licensed program.

5.5 DECOMMISSIONING AND RELATED RECORDS TRANSFERS

Regulations: 10 CFR 30.34(b); 30.35(g); 10 CFR 40.46; 40.36(f); 10 CFR 70.36; and 70.25(g).

Criteria: Prior to the approval of a change of control, NRC regulations require that licensees arrange for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. NRC also requires a description of the status of the licensed facility with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC licensed activities. The parties must confirm, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment.

Discussion: Licensees are required to maintain certain records important to safe and effective decommissioning, including: evaluations concerning waste disposal by release as effluents (either air or water); release to sewers; incineration; disposal of liquid scintillation medium and animal tissue as if it were not radioactive; and disposal by methods specifically allowed through the license.

Subsequent to the transfer, the new licensee will become responsible for maintaining these records until the license is terminated. If licensed activities will continue at the same location, NRC requires confirmation that all the records of the aforementioned evaluations have been transferred to the new licensee. If the license will be terminated, these records must be forwarded to the appropriate NRC Regional Office.

No change of control or ownership or license termination will be authorized until all required records have been transferred to the new licensee or to NRC, as appropriate.

These regulations require that before licenses are transferred or assigned, all records be transferred to the new licensee. The regulations require that all records of measurements and calculations used to evaluate the release of radioactive effluents to the environment and records of certain disposals be transferred to the new licensee prior to the license being transferred or assigned, unless the existing licensee was only authorized to possess and use unsealed material with a half life of less than 65 days or material in a sealed source form.

The current licensee must document ambient radiation levels and the presence or absence of contamination. The documentation must include, as appropriate, the method and sensitivity of the evaluation. If contamination is present, the documentation should describe how and when decontamination will occur or indicate that the timing and means of decontamination and/or decommissioning have not yet been determined.

The current licensee must also discuss how the parties agree to assume responsibility for the decontamination and decommissioning of licensed facilities. Those licensees required under 10 CFR 30.35, 40.36, and/or 70.25 to provide evidence of adequate resources to fund any required decommissioning must describe the effect that the change of control will have on financial assurance for decommissioning. As necessary, documents describing financial assurance must be amended to reflect the change in control. This documentation may refer to decontamination plans, including any required financial assurance arrangements of the transferor, that were previously submitted in support of a decommissioning funding plan.

Response from the Licensee:

- Describe the method and proposed timetable for the transfer of required records.
- Provide a commitment by the transferee to maintain the records received from the transferor.
- Provide a description of the facility with regard to contamination and ambient radiation levels.
- Describe any decontamination to prepare the facility for decommissioning prior to the change of control.
- If decommissioning will not occur until after the change of control, describe any contamination and confirm that the transferee is knowledgeable of the extent and levels of contamination and applicable decommissioning requirements.

Note: Licensees authorized to possess and use only licensed material with a half-life of less than 65 days and/or only licensed material in sealed form are excepted from this requirement to maintain and transfer effluent and disposal records. *All* licensees are required to maintain and transfer only those records for unsealed materials with a half-life greater than 65 days.

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Notes:

- Licensees should contact NRC Regional or Headquarters personnel to determine acceptable methods and criteria for decommissioning and releasing licensed facilities for unrestricted use.
- The licensee or applicant should refer to Section 10.11 for a discussion of the records involved in the management and disposal of radioactive waste specific to their type of licensed program.

5.6 TRANSFEREE'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

Regulation: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

Criteria: The new licensee (transferee) must either: (1) submit a commitment to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license; or (2) provide a description of its own program to comply with the license and all applicable regulations.

Discussion: The transferee may agree to abide by all constraints, conditions, requirements, representations, and commitments previously made to NRC by the transferor. This would include, but not be limited to, information submitted in support of license amendments (including documents itemized in the tie-down condition of the license) and the maintenance of decommissioning records required by 10 CFR 30.35. Alternatively, the transferee may submit a description of its own program to ensure compliance with the license and regulations.

This would also include completion of corrective actions for open inspection items and enforcement actions and, if required, implementation of site decontamination and decommissioning activities.

With regard to open inspection items and/or enforcement actions, the transferee should confirm, in writing, that it is knowledgeable of and accepts full responsibility for open inspection items and/or any resulting enforcement actions. Alternatively, the transferee may propose other measures for meeting these requirements, or the transferor may provide a commitment to close out all such actions with NRC before license transfer.

Information Required of the Licensee:

- An agreement to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license (or) a description of the transferees' program to ensure compliance with the license and regulations;
- A description of action to be taken to resolve open inspection and enforcement issues.

6 BANKRUPTCY

Regulations: 10 CFR 30.34(h); 10 CFR 40.41(f); 10 CFR 70.32(a)(9).

Criteria: The licensee must notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by or against:

- A licensee;
- An entity controlling the licensee; or
- An affiliate of the licensee.

This notification must identify the bankruptcy court in which the petition was filed and the date of filing. Specific legal definitions of the terms “entity” and “affiliate” as used in this regulation may be found in 11 U.S.C. 101(14) and in 11 U.S.C. 101(2), respectively.

Discussion: A licensee’s financial condition could affect its ability to control licensed material. Therefore, NRC must be notified so it can assure that appropriate measures to protect the public health and safety have been or will be taken. These measures include:

- Maintaining security of licensed material and contaminated facilities;
- Assuring that licensed material is transferred only to properly authorized NRC or Agreement State licensees;
- Assuring that properly trained and experienced personnel are retained to implement appropriate radiation safety measures.

Note: Licensees who have filed for bankruptcy remain responsible for all regulatory requirements.

NRC may share pertinent information with other involved entities (e.g., trustees) so that health and safety issues can be resolved before bankruptcy actions are completed.

There are different types of bankruptcies described in Title 11 of the United States Code. The following discussion outlines the bankruptcy types that may involve NRC.

- Chapter 7 is used primarily by individuals and by businesses who wish to free themselves from debt simply and inexpensively. The debtor may enter Chapter 7 bankruptcy voluntarily or be forced to enter it involuntarily by creditors. The creditors of a debtor, as well as the debtor, have the right under Chapter 11 to convert to a case under Chapter 7.
- Chapter 9 addresses the adjustments of debts of a municipality.

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- Chapter 11 is generally used to reorganize a business and allows the debtor to continue its business operations by a plan of reorganization in the hopes it can be returned to a viable state. As under Chapter 7, the debtor may enter Chapter 11 bankruptcy either voluntarily or involuntarily.
- Chapter 12 is designed to give special relief to a family farmer with regular income.
- Chapter 13 is used as a rehabilitation vehicle for an individual with regular income whose debts do not exceed specified amounts, and is typically used to budget some of the debtor's future earnings under a plan through which creditors are paid in whole or in part.

The filing of a petition in bankruptcy court triggers the automatic stay provision in Section 362(a) of the United States Bankruptcy Code. This provision stays legal actions against the debtor or against the property of the bankruptcy estate, except in certain limited circumstances that include public health, safety, and environmental obligations. See *Midlantic National Bank v New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) and *In re Chateaugay Corporation*, 944 F.2d 997 (2d Cir 1991).

NRC will establish a Bankruptcy Review Team (BRT) to review and act on bankruptcy notifications when they occur. The BRT brings together the various NRC offices and is typically composed of members of the relevant licensing office staff, the Office of the General Counsel (OGC), the Office of the Controller (OC), the Office of Enforcement (OE), the Division of Industrial and Medical Nuclear Safety (IMNS), and the Division of Waste Management (DWM).

NRC procedures for reviewing bankruptcy actions are described in detail in Appendix H. These procedures ensure that bankruptcy cases are managed in a fully-coordinated manner with all involved NRC staff. Key provisions of these procedures may be summarized as follows:

- NRC will promptly verify any bankruptcy information obtained and ensure that the required written notification is submitted by the licensee.
- NRC will promptly verify the adequacy of control of all licensed material possessed by the licensee and, if appropriate, conduct a special inspection and/or request emergency assistance from other Federal agencies.
- NRC staff should, upon receipt of a bankruptcy notification, promptly alert NRC management and initiate formation of a BRT for the case.
- The BRT will develop a list of NRC recipients to receive additional information as it becomes available.
- NRC management will assign an individual as the lead for the bankruptcy action.

- The BRT will promptly, by telephone or fax, inform:
 - the licensee or trustee, if appointed, that the bankruptcy filing does not relieve the licensee of its obligation to comply with all NRC requirements. Inspections and other NRC regulatory actions will continue after the bankruptcy filing.
 - the Bankruptcy Court that any trustee or receiver in bankruptcy retains the debtor licensee's legal obligations, including public health, safety, and environmental obligations, and must comply with NRC regulations and license conditions.

Note: Any person possessing property contaminated with NRC licensed materials, transferred by the licensee before completion of decommissioning, must comply with all applicable NRC requirements, including obtaining or maintaining an NRC license and completing decommissioning.

Note: A reorganized entity emerging from Chapter 11 bankruptcy must receive written NRC approval prior to its assumption of control over licensed activities.

- Following the informal contact, NRC staff will provide written notification to the Bankruptcy Court, any trustee or receiver in bankruptcy, or owner of property contaminated by the licensee's activities, regarding the licensee's obligations to control the site, to decontaminate and decommission the site, and to comply with applicable NRC requirements and the conditions of the license.

Note: NRC licenses remain in full effect, even beyond their stated expiration date, until terminated in writing by NRC.

- The OGC representative to the BRT will ensure representation by the Department of Justice (DOJ) of NRC's interests in any bankruptcy proceedings.
- The BRT will assess the current public health and safety situation at the licensee's facility and any impacts that bankruptcy could have on licensed operations. NRC will make an in-house hazard assessment of the extent of contamination and health risks posed by any contamination present. This assessment will be used to:
 - support any NRC discussions with the Environmental Protection Agency (EPA), the Department of Energy (DOE), DOJ, and OGC;
 - support any petition to the bankruptcy court for priority disbursements of the bankruptcy estate; and
 - determine if prompt action is necessary to secure the site or to take any other action required under the Atomic Energy Act (AEA).

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- The OGC representative will provide the BRT with copies of all pertinent filings in the bankruptcy proceeding. The bankruptcy lead will maintain copies of these filings. The licensee might, as a courtesy, provide some copies of filings, but there is no obligation to do so.
- The BRT will decide if additional information is needed from the licensee; make recommendations about the need to issue orders to the licensee or other persons; and prepare a list of issues to be addressed. The OGC and OE representatives to the BRT should help prepare any Demands for Information, Orders, Notices of Violation, or other enforcement actions regarding the licensee, the Trustee, or the Receiver in bankruptcy.
- The BRT, in coordination with the Office of State and Tribal Programs or the Regional State Liaison Officer, will inform the appropriate EPA Regional Office of the bankruptcy, if appropriate, and will provide the EPA staff with the results of NRC's in-house hazard assessment. If the BRT considers that a "removal" action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) may be appropriate, the bankruptcy lead will discuss with the EPA staff whether a "removal" action should be pursued.
- The BRT will recommend whether the support of a technical contractor is needed to analyze the licensee's financial condition and coordinate the technical support through DWM.
- The BRT will ensure that Suggestions of Interest or Proofs of Claim are filed with the Bankruptcy Court for matters such as: actions to maintain control of radioactive materials, site decommissioning, or licensing fees or civil penalties that may be due NRC.
- The BRT will make recommendations as to the need to draw on financial assurance instruments that may have been submitted by the licensee. Appendix I contains detailed procedures for drawing on financial assurance instruments.
- The BRT will consider the need for additional legal action by NRC that would require the debtor to decontaminate and decommission the site. The BRT should also determine whether there are NRC administrative proceedings or other litigation pending or anticipated (i.e., civil penalties, fee collection) that may affect NRC staff actions in the bankruptcy proceeding.

Response from Licensee or Applicant: A licensee (or an entity controlling the licensee, or an affiliate of the licensee) must immediately notify the appropriate NRC Regional Administrator, in writing, of the following information:

- Bankruptcy court in which the petition was filed;
- Date that the petition was filed.

Licensees are requested to also provide the information described in Appendix G. This information may be provided to NRC by fax, e-mail, or first class mail.

Notes:

- The requirements in these regulations apply to a bankruptcy proceeding for or against the licensee itself, an entity controlling the licensee, an entity listing the licensee as a property of the estate, or an affiliate of the licensee. For example, Company A owns Company B, and Company B is an NRC licensee. Company A files to reorganize under Chapter 11 of the bankruptcy law. Company B must notify NRC immediately after such a filing.
- Licensees (or entities controlling a licensee, or affiliates of the licensee) may contact the appropriate Regional or Headquarters office for further information or guidance.
- Specific licensees who also possess generally licensed devices should carefully review the change of control requirements described in Appendix B of this report. In some cases, the transfer of these generally licensed materials is subject to the requirement to obtain prior NRC approval to any change of control that may result from a bankruptcy proceeding.

7 HOW TO FILE

7.1 PAPER APPLICATION

- Licensees requesting amendment of a current license and persons applying for a new materials license as the result of a change of control or bankruptcy should do the following:
- Be sure to use the most recent program-specific guidance in preparing an application.
- Complete NRC Form 313 (Appendix A) Items 1 through 4, 12, and 13 on the form itself (where applicable).
- Complete NRC Form 313 Items 5 through 11 on supplementary pages.
- For each separate sheet that is submitted with the application, identify and key it to the item number on the application or the topic to which it refers.
- Submit all documents on 8-1/2 x 11 inch paper.
- Avoid submitting proprietary information unless it is absolutely necessary. See Chapter 3, “Management Responsibility,” and Appendices J and K for additional information regarding the submission of proprietary or other sensitive information.
- Submit an original, signed application and one copy.
- Retain one copy of the license application for future reference.

As required by 10 CFR 30.32(c) (as well as similar provisions of 10 CFR Part 40, and 10 CFR Part 70), applications must be signed by a duly authorized representative; see the section on “Certification.”

Using the suggested wording of responses and committing to using the model procedures in this report and other appropriate volumes in the NUREG-1556 series will expedite NRC’s review.

All license applications will be available for review by the general public in NRC’s Public Document Rooms.

Publicly available documents may be accessed through NRC’s Public Electronic Reading Room using NRC’s Agency Document Management and Management System (ADAMS). ADAMS is a public information system that allows access to NRC’s publicly available documents. It supports expanded public access to these documents via the Internet. It permits full text searching and the ability to view document images, download files, and print locally. It also provides more timely release of documents to the public. ADAMS will replace the Bibliographic Retrieval System (BRS) and the Nuclear Documents System (NUDOCS), the two systems the

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public currently uses to search for NRC records. Additional information about ADAMS may be found at <http://www.nrc.gov/NRC/ADAMS/index.html>.

10 CFR 2, Subpart M, “Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,” contains specific information regarding requests and procedures for conducting hearings on any application for the direct or indirect transfer of control of an NRC license transfer that requires prior approval of NRC under the Commission’s regulations, governing statutes, or pursuant to a license condition. This subpart is to provide the only mechanism for requesting hearings on license transfer requests, unless contrary case-specific orders are issued by the Commission.

If it is necessary to submit proprietary information, follow the procedure in 10 CFR 2.790. Failure to follow this procedure could result in disclosure of the proprietary information to the public or substantial delays in processing the application. Employee personal information, i.e., home address, home telephone number, Social Security number, date of birth, and radiation dose information, should not be submitted unless specifically requested by NRC.

As explained in the “Foreword,” NRC’s new licensing process will be faster and more efficient, in part, through acceptance and processing of electronic applications at some future date. NRC will continue to accept paper applications; however, these will be scanned and put through an optical character reader (OCR) to convert them to electronic format. To ensure a smooth transition, applicants are requested to follow these suggestions:

- Submit printed or typewritten, not handwritten, text on smooth, crisp paper that will feed easily into the scanner.
- Choose typeface designs that are sans serif, such as Arial, Helvetica, Futura, Univers; the text of this document is in a serif font called Times New Roman.
- Choose 12-point or larger font size.
- Avoid stylized characters such as script, italic, etc.
- Be sure the print is clear and sharp.
- Be sure there is high contrast between the ink and paper (black ink on white paper is best).

7.2 ELECTRONIC APPLICATION

As the electronic licensing process develops, it is anticipated that NRC may provide mechanisms for filing applications via diskettes or CD-ROM, and through the Internet. Additional filing instructions will be provided as these new mechanisms become available. The existing paper process will be used until the electronic process is available.

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8 WHERE TO FILE

Licensees requesting amendment of a current license and persons applying for a new materials license as the result of a change of control or bankruptcy should file an application with the NRC Regional Office for the locale in which the material will be possessed and/or used. Figure 2.1 shows NRC's four Regional Offices and their respective areas for licensing purposes and identifies Agreement States.

In general, applicants wishing to possess or use licensed material in Agreement States must file an application with the Agreement State, not NRC. However, if work will be conducted at Federally controlled sites in Agreement States, applicants must first determine the jurisdictional status of the land in order to determine whether NRC or the Agreement State has regulatory authority. See Section 2, Agreement States, for additional information.

9 LICENSE FEES

NRC does not impose fees for review of notification of change of control or of bankruptcy. However, a fee will be assessed if a license amendment or new license is required based on a review of the information provided.

Each application for which a fee is specified, including applications for new or amended licenses, must be accompanied by the appropriate fee. Licensees or applicants should refer to 10 CFR 170.31 to determine the amount of the fee.

NRC will not issue the new or amended license prior to fee receipt. Once technical review has begun, no fees will be refunded; application fees will be charged regardless of NRC's disposition of an application or the withdrawal of an application. Applicants or licensees should consult 10 CFR 170.11 for additional information on exemptions from licensing fees.

Most NRC licensees are also subject to annual fees; refer to 10 CFR 171.16. Consult 10 CFR 171.11 for additional information on exemptions from annual fees and 10 CFR 171.16(c) on reduced annual fees for licensees that qualify as "small entities."

Direct all questions about NRC's fees or completion of Item 12 of NRC Form 313 (Appendix A) to the Office of the Chief Financial Officer (OCFO) at NRC Headquarters in Rockville, Maryland, (301) 415-7554. You may also call NRC's toll-free number at (800) 368-5642, extension 415-7554.

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As noted elsewhere in this report, changes of control or bankruptcies that result in changes in the licensee's radiation safety program generally will require that the license be amended. The following comments apply to the indicated items on NRC Form 313 (Appendix A). Persons are required to use NRC Form 313 in applying for a new or amended Part 30 or Part 40 license. Not all amendment actions will require that each item on NRC Form 313 be addressed. Applications for amendment of current licenses should address only the changes necessary to reflect changes in control.

Applicants and holders of licenses authorizing the possession and use of special nuclear materials should submit information relating to any change of control or bankruptcy in accordance with the applicable provisions of 10 CFR Part 70.

10.1 ITEM 1: LICENSE ACTION TYPE

THIS IS AN APPLICATION FOR (Check appropriate item)

Type of Action	License No.
<input type="checkbox"/> A. New License	Not Applicable
<input type="checkbox"/> B. Amendment	XX-XXXXXX-XX
<input type="checkbox"/> C. Renewal	XX-XXXXXX-XX

Check box A for a new license request.

Check box B for an amendment to an existing license, and provide license number.

Check box C for a renewal of an existing license, and provide license number.

10.2 ITEM 2: APPLICANT'S NAME AND MAILING ADDRESS

List the legal name of the corporation or other legal entity with control over licensed activity. Note that a division or department within a legal entity may generally not be a licensee. An individual may be designated as the applicant or licensee only if the individual is acting in a private capacity and the use of the radioactive material is not connected with employment in a corporation or other legal entity. Provide the mailing address where correspondence should be sent. A Post Office box number is an acceptable mailing address.

Notify NRC of changes in mailing address; these changes do not require a fee.

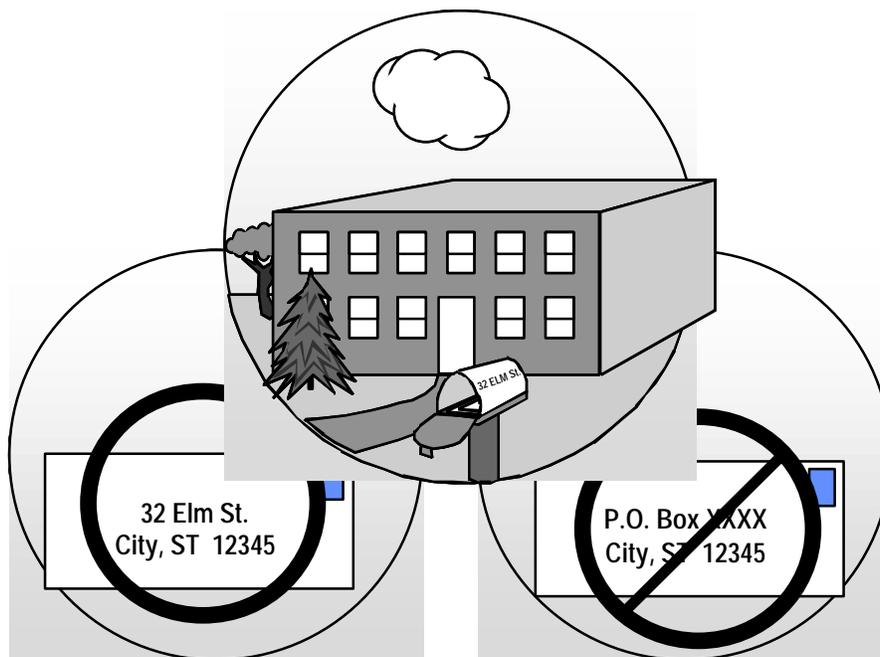
Note: NRC must be notified before control of licensed activities is transferred or when bankruptcy proceedings have been initiated. NRC Information Notice (IN) 97-30, "Control of

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Licensed Material during Reorganizations, Employee-Management Disagreements, and Financial Crises,” dated June 3, 1997, discusses the potential for the security and control of licensed material to be compromised during periods of organizational instability. This document provides additional guidance on that subject.

10.3 ITEM 3: ADDRESS(ES) WHERE LICENSED MATERIAL WILL BE USED OR POSSESSED

Specify the street address, city, and state or other descriptive address (e.g., on Highway 10, 5 miles east of the intersection of Highway 10 and State Route 234, Anytown, State) for each facility. The descriptive address should be sufficient to allow an NRC inspector to find the facility. A Post Office Box address is not acceptable.



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Figure 10.1 Location of Use.

Being granted an NRC license does not relieve a licensee from complying with other applicable Federal, State, or local regulations (e.g., local zoning requirements; a local or state ordinance requiring registration of a radiation-producing device).

It should be noted that if a current licensee merges with another licensee and either becomes a multi-site licensee or if a current multi-site licensee increases the number of authorized places of use on the subsequent license, consideration must be given to maintaining safe operations and providing adequate oversight.

Notes:

- As discussed under “Financial Assurance and Recordkeeping for Decommissioning,” licensees need to maintain permanent records on where licensed material was used or stored while the license was in force. This is important for making future determinations about the release of these locations for unrestricted use (e.g., before the license is terminated). Licensees who increase the authorized quantities of licensed materials possessed under a license as the result of a change of control (such as merger or acquisition of assets) must evaluate, and modify if needed, the amount of funding needed to ensure the safe and effective decommissioning of licensed activities.
- NRC staff should refer to P&GD 1-23 (Guidance for Multi-Site Licensees). Licensees requiring further information should contact their respective Regional or Headquarters license reviewers for a copy of this document.

10.4 ITEM 4: PERSON TO BE CONTACTED ABOUT THIS APPLICATION

Identify the individual who can answer questions about the application and include his or her telephone number. This is typically the current or proposed Radiation Safety Officer (RSO), unless the applicant has named a different person as the contact. NRC will contact this individual if there are questions about the application. Please supply the e-mail address and fax number, if available.

Notify NRC if the contact person or his or her telephone number changes so that NRC can contact the applicant or licensee in the future with questions, concerns, or information. This notice is for “information only.”

As indicated on NRC Form 313 (Appendix A), Items 5 through 11 should be submitted on separate sheets of paper. Applicants should note that using the suggested wording of responses and committing to using the model procedures in this report and in the various appropriate volumes in the NUREG-1556 series will expedite NRC’s review.

10.5 ITEM 5: RADIOACTIVE MATERIAL

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the possession of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met.

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Discussion: Licensees or applicants, and NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series, or other appropriate guidance documents, to determine what information should be submitted concerning licensed materials to be possessed.

Response from Applicant: Licensees should submit the information regarding licensed materials to be possessed as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes in types, forms, and quantities of licensed materials to be possessed. It is also helpful to indicate what authorized materials will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents, for specific criteria to be used in reviewing licensee or applicant submissions.
- NUREG-1556 volumes and other guidance documents may be available electronically in the “Reference Library” at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report) or contact the appropriate NRC Headquarters or Regional Office.

10.5.1 UNSEALED AND/OR SEALED BYPRODUCT MATERIAL

Regulations: 10 CFR 30.32(h); 10 CFR 30.35; 10 CFR 40.31(i); 10 CFR 40.36; 10 CFR 70.22(a)(9); 10 CFR 70.25.

Criteria: A licensee authorized to possess sufficient licensed material to require financial assurance in accordance with 10 CFR 30.35, 10 CFR 40.36, or 10 CFR 70.25 must submit a decommissioning funding plan (DFP) and/or provide a certification of financial assurance for decommissioning (F/A). All licensees are required to maintain records of information important to the decommissioning of the facility in an identified location until the site, or any area, is released for unrestricted use. Licensees must transfer these records either to the new licensee when licensed activities are transferred or assigned, or to the appropriate NRC Regional Office when the license is terminated.

Discussion: Licensees who increase the authorized quantities of licensed materials possessed under a license as the result of a change of control (such as merger, acquisition of assets, or bankruptcy-related reorganization) must evaluate, and modify if needed, the amount of funding available to ensure the safe and effective decommissioning of licensed activities. Decommissioning should be carried out with minimum impact on public and occupational health and safety and the environment. There are two applicable sets of requirements: financial assurance, which applies to some licensees, and recordkeeping, which applies to all licensees.

NRC regulations requiring an F/A or a DFP are designed to provide reasonable assurance that the decommissioning of licensed facilities will be accomplished in a safe and timely manner and that licensees will provide adequate funds to cover all costs associated with decommissioning. These requirements, if applicable, specify that a licensee either set aside funds for decommissioning activities or provide a guarantee, through a third party, that funds will be available. Applicants are required to submit an F/A or a DFP when the authorization to possess radioactive material with half lives ($t_{1/2}$) greater than 120 days exceeds certain limits. Criteria for determining whether an applicant is required to submit a DFP or has an option of submitting either a DFP or an F/A are stated in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25.

Criteria relating to the use of self-guarantees or parent company guarantees can be found in 10 CFR 30, Appendices A, C, D and E.

Regulatory Guide (RG) 3.66, “Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72,” dated June 1990, provides guidance acceptable to the NRC staff on the information to be provided for establishing financial assurance for decommissioning and a standard format for presenting the information.

The requirements for maintaining records important to decommissioning, including the type of information required, are stated in 10 CFR 30.35(g), 10 CFR 40.36(f), and 10 CFR 70.25(g). All licensees are required to maintain these records in an identified location until the site is released for unrestricted use. In the event that control over licensed activities is transferred to another person, these records shall be transferred to the new licensee upon the transfer of control. The new licensee is responsible for maintaining these records until the license is terminated. When the license is terminated, these records must be transferred to NRC.



Figure 10.2 Types of Records that Must Be Maintained for Decommissioning.

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Careful recordkeeping of radionuclides used, including form, amount, and areas where used, will facilitate area release and license termination.

Additional information about keeping and transferring records that are important to safe and effective decommissioning can also be found in Chapter 5.5, “Decommissioning and Related Records Transfers.”

Response from Licensees or Applicants: No response is needed from most applicants or licensees. If an F/A or a DFP is required, submit the required documents as described in RG 3.66.

References: See the Notice of Availability (on the inside front cover of this report) to obtain copies of RG 3.66 and Policy and Guidance Directive FC 90-2 (Rev. 1), “Standard Review Plan for Evaluating Compliance with Decommissioning Requirements,” dated April 30, 1991.

10.6 ITEM 6: PURPOSE(S) FOR WHICH LICENSED MATERIAL WILL BE USED

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met.

Discussion: Licensees or applicants, and NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series, or other appropriate guidance documents, to determine what information should be submitted concerning authorized uses of licensed materials.

Response from Applicant: Licensees should submit the information regarding authorized uses of licensed materials specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to authorized use of licensed materials. It is also helpful to indicate what authorized uses will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents, for specific criteria to be used in reviewing licensee or applicant submissions.

- NUREG-1556 volumes and other guidance documents may be available electronically in the “Reference Library” at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report), or contact the appropriate NRC Headquarters or Regional Office.

10.7 ITEM 7: INDIVIDUAL(S) RESPONSIBLE FOR RADIATION SAFETY PROGRAM AND THEIR TRAINING AND EXPERIENCE

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met regarding the individuals responsible for the radiation safety program and their training and experience.

Discussion: Licensees or applicants, and NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series, or other appropriate guidance documents, to determine what information should be submitted concerning the identity, as well as the training and experience of the individuals responsible for the radiation safety program. Generally, these individuals include the RSO and any authorized users who will be named on the license. It is NRC licensing policy to name a Radiation Safety Officer on all NRC materials licenses.

Response from Applicant: Licensees should submit the information regarding the individuals responsible for the radiation safety program as specified in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. Licensees should particularly focus on whether a change of control or bankruptcy will result in changes in the personnel responsible for the radiation safety program. Licensees must specify who is to be named on the license as the RSO. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the personnel responsible for the radiation safety program. It is also helpful to indicate what personnel with radiation safety oversight components of the radiation safety program will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents, for specific criteria to be used in reviewing licensee or applicant submissions.
- NUREG-1556 volumes and other guidance documents may be available electronically in the “Reference Library” at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report) or contact the appropriate NRC Headquarters or Regional Office.

10.8 ITEM 8: TRAINING FOR INDIVIDUALS WORKING IN OR FREQUENTING RESTRICTED AREAS (INSTRUCTIONS TO OCCUPATIONALLY EXPOSED WORKERS AND ANCILLARY PERSONNEL)

Regulations: 10 CFR Part 30; 10 CFR Part 33; 10 CFR Part 34; 10 CFR Part 35; 10 CFR Part 36; 10 CFR Part 39; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met regarding the training for individuals such as occupationally exposed workers and ancillary personnel working in or frequenting restricted areas.

Discussion: Licensees or applicants, and NRC staff should refer to the appropriate program specific guidance found in the NUREG-1556 series, or other appropriate guidance documents to determine what information should be submitted regarding the training for individuals such as occupationally exposed workers and ancillary personnel working in or frequenting restricted areas.

Response from Applicant: Licensees should submit information regarding the training for individuals such as occupationally exposed workers and ancillary personnel working in or frequenting restricted areas as specified in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing radiation safety training program. It is also helpful to indicate what components of the radiation safety training program will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents, for specific criteria to be used in reviewing licensee or applicant submissions.
- NUREG-1556 volumes and other guidance documents may be available electronically in the "Reference Library" at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report) or contact the appropriate NRC Headquarters or Regional Office.

10.9 ITEM 9: FACILITIES AND EQUIPMENT

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met demonstrating that the licensee (or applicant) has facilities and equipment that are adequate to protect health and to minimize danger to life or property.

Discussion: Licensees or applicants, and NRC staff should refer to the appropriate program specific guidance found in the NUREG-1556 series, or other appropriate guidance documents to determine what information should be submitted concerning the facilities and equipment needed to ensure the safe storage and use of licensed materials.

Response from Applicant: Licensees should submit information demonstrating that adequate facilities and equipment are available for licensed activities as specified in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing facilities. It is also helpful to indicate what components of the existing facilities will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents for specific criteria to be used in reviewing licensee or applicant submissions.
- NUREG-1556 volumes and other guidance documents may be available electronically in the “Reference Library” at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report), or contact the appropriate NRC Headquarters or Regional Office.

10.10 ITEM 10: RADIATION SAFETY PROGRAM

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met demonstrating that the licensee’s (or applicant’s) radiation safety program is adequate to protect health and minimize danger to life or property.

Discussion: Licensees or applicants, and NRC staff, should refer to the appropriate program specific guidance found in the NUREG-1556 series, or other appropriate guidance documents, to

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determine what information should be submitted concerning the specific aspects of the radiation safety program to demonstrate that the program will be adequate to ensure the safe receipt, storage, use, transfer and disposal of licensed materials.

Generally, all licensees or applicants should include detailed descriptions of the following components of their radiation safety program. However, this list is generic and some licensees may need to address additional aspects of their radiation safety program while others may not need to include information about all of the following items:

- A description of the audit program used to review at least annually the content and implementation of the radiation protection programs to ensure:
 - compliance with NRC regulations (as applicable) and the terms and conditions of the license;
 - that occupational doses and doses to members of the public are as low as reasonably achievable (ALARA) (10 CFR 20.1101); and
 - records of audits and other reviews of program content are maintained for 3 years.
- A description of the radiation monitoring equipment available for making required surveys and the program to keep that equipment properly calibrated.
- A description of the procedures used to safely receive and maintain sufficient accountability of licensed materials.
- A description of the program for monitoring the radiation dose of individuals who are occupationally exposed as the result of licensed activities.
- A description of the program for ensuring that doses to members of the general public as the result of licensed activities do not exceed regulatory limits and are ALARA.
- A description of normal and emergency operating procedures.
- A description of the procedures for leak testing any sealed sources authorized on the license.
- A description of the procedures for maintaining equipment containing licensed materials and radiation safety-related equipment.
- A description of the procedures for safely packaging and transporting licensed materials.

Descriptions of facility design and procedures for operating to minimize contamination of the facility and the environment; to facilitate eventual decommissioning; and to minimize, to the extent practicable, the generation of radioactive waste.

Response from Applicant: Licensees should submit information describing a radiation safety program that is appropriate and adequate for the proposed licensed activities as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons

applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing radiation safety program. It is also helpful to indicate what components of the radiation safety program will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents, for specific criteria to be used in reviewing licensee or applicant submissions.
- NUREG-1556 volumes and other guidance documents may be available electronically in the “Reference Library” at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report) or contact the appropriate NRC Headquarters or Regional Office.

10.11 ITEM 11: WASTE MANAGEMENT

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met. The licensee (or applicant) must demonstrate that it has procedures and equipment to safely dispose of licensed materials in accordance with NRC requirements and to maintain appropriate records of these disposals.

Discussion: Licensees or applicants, and NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series, or other appropriate guidance documents, to determine what information should be submitted concerning the facilities, equipment and procedures needed for the safe disposal of licensed materials, or contact the appropriate NRC Headquarters or Regional Office for guidance or information. Licensees should assure that any transfer of control or bankruptcy does not adversely impact the waste management program.

Applicants or licensees may request alternate methods not specifically described in the regulations for the disposal of radioactive waste generated at their facilities. Such requests must describe the waste containing licensed material, including the physical and chemical properties that may be important to assess risks associated with the waste, and the proposed manner and conditions of waste disposal. Additionally, the applicant must submit its analysis and evaluation of pertinent information on the nature of the environment, nature and location of other affected facilities, and procedures to ensure that radiation doses are maintained ALARA and within regulatory limits.

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Response from Applicant: Licensees or applicants should submit the information about their equipment and procedures (including the maintenance of required records) for the safe disposal of licensed materials as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to their existing radioactive waste management program. It is also helpful to indicate what components of the radioactive waste management program will remain unchanged.

Notes:

- NRC staff should refer to the applicable volume of NUREG-1556, or other appropriate guidance documents, for specific criteria to be used in reviewing licensee or applicant submissions.
- NUREG-1556 volumes and other guidance documents may be available electronically in the “Reference Library” at <<http://www.nrc.gov>>. For a paper copy of one of these documents, see the Notice of Availability (on the inside front cover of this report) or contact the appropriate NRC Headquarters or Regional Office.

10.12 ITEM 12: FEES

The next two items on NRC Form 313 are to be completed on the form itself. Enter the appropriate fee category from 10 CFR 170.31 and the amount of the fee enclosed with the application.

NRC does not impose fees for review of notification of change of control or of bankruptcy. However, a fee will be assessed if a license amendment or new license is required based on a review of the information provided.

10.13 ITEM 13: CERTIFICATION

In the case of applications for new or amended Part 30 or Part 40 licenses, individuals acting in a private capacity are required to date and sign the submitted NRC Form 313. Similarly, authorized representatives of the corporation or legal entity filing the application should date and sign the submitted NRC Form 313.

Applications for new or amended Part 70 licenses must be properly signed by the appropriate individuals.

Representatives signing an application must be authorized to make binding commitments and to sign official documents on behalf of the applicant. As discussed previously in “Management Responsibility,” signing the application acknowledges management’s

commitment and responsibilities for the radiation protection program. **NRC will return all unsigned applications for proper signature.**

Notes:

- It is a criminal offense to make a willful false statement or representation on applications or correspondence (18 U.S.C. 1001).
- When the application references commitments, those items become part of the licensing conditions and regulatory requirements.

11 APPLICATIONS FOR EXEMPTIONS

Various sections of NRC's regulations address requests for exemptions (i.e., 10 CFR 19.31, 10 CFR 20.2301, 10 CFR 30.11(a)). These regulations state that NRC may grant an exemption, acting on its own initiative or on an application from an interested person. Key considerations are whether the exemption is authorized by law, will endanger life or property or the common defense and security, and is otherwise in the public interest.

If a new license is being requested as the result of a change of control or bankruptcy, the applicant must submit a request for all exemptions. NRC will review the basis of existing exemptions if the license is amended as the result of a change of control or bankruptcy.

Until NRC has granted an exemption in writing, NRC expects strict compliance with all applicable regulations.

Exemptions are not intended for large classes of licenses, and are generally limited to unique situations. Exemption requests must be accompanied by descriptions of the following:

- The proposed exemption and why it is needed;
- The proposed compensatory safety measures intended to provide a level of health and safety equivalent to the regulation from which the exemption is being requested;
- Any alternative methods considered for complying with the regulation and why they are not feasible.

12 TERMINATION OF ACTIVITIES

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

Criteria: Persons holding a byproduct, source, or special nuclear material license issued in accordance with 10 CFR, Parts 30, 40, or 70 must do the following:

- Notify NRC, in writing, within 60 days of:
 - the expiration of its license;
 - a decision to cease licensed activities permanently at the entire site (regardless of contamination levels);
 - a decision to cease licensed activities permanently in any separate building or outdoor area if they contain residual radioactivity making them unsuitable for release according to NRC requirements;
 - no principal activities having been conducted at the entire site under the license for a period of 24 months;
 - no principal activities having been conducted for a period of 24 months in any separate building or outdoor area if they contain residual radioactivity making them unsuitable for release according to NRC requirements.
- Submit a decommissioning plan, if required by 10 CFR 30.36(g) (or similar provisions of 10 CFR Part 40 and 10 CFR Part 70).
- Conduct decommissioning, as required by 10 CFR 30.36(h) and 10 CFR 30.36(j) (or similar provisions of 10 CFR Part 40 and 10 CFR Part 70).
- Submit, to the appropriate NRC Regional Office, a completed NRC Form 314, “Certificate of Disposition of Materials” (or equivalent information) and a demonstration that the premises are suitable for release for unrestricted use (e.g., results of final survey).
- Before a license is terminated, send the records important to decommissioning to the appropriate NRC Regional Office. If licensed activities are transferred, assigned, or otherwise disposed of in accordance with 10 CFR 30.34(b) (or similar provisions of 10 CFR Part 40 and 10 CFR Part 70), transfer records important to decommissioning to the new licensee.

Discussion: The licensee must determine whether residual radioactivity is present. A licensee’s determination that a facility is not contaminated is subject to verification by NRC inspection.

For guidance on the disposition of licensed material, see the section on “Waste Management.” For guidance on decommissioning records, see the section on “Radioactive Materials – Financial Assurance and Recordkeeping for Decommissioning.”

Response from Applicant: The licensee’s obligations in this matter are to ensure that appropriate actions are taken and plans are in place before the license expires or at the time the

TERMINATION OF ACTIVITIES

licensee ceases operations, whichever is earlier. These obligations are to undertake the necessary decommissioning activities, to submit NRC Form 314 or equivalent information, and to perform any other actions as summarized in the criteria.

Reference: Copies of NRC Form 314, "Certificate of Disposition of Materials," are available upon request from NRC's Regional Offices. (See Figure 2.1 for addresses and telephone numbers.)

13 PROTECTION OF SENSITIVE INFORMATION

Regulations: 10 CFR 2.790.

Criteria: Licensees or other persons wishing to protect sensitive information regarding proposed changes of control should request that sensitive information be protected in accordance with 10 CFR 2.790.

Discussion: Final NRC records and documents, including but not limited to correspondence to and from NRC regarding the issuance, amendment, transfer, or modification of a license, are available for public inspection and copying, in the absence of a compelling reason for nondisclosure. NRC recognizes that information regarding a proposed change of control may be extremely sensitive and that the public release of such information may have an adverse impact on the licensee, as well as other persons potentially involved in the change of control.

The regulations list various forms of information that can be protected from public disclosure, including:

- trade secrets and commercial or financial information;
- interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Commission;
- certain records or information compiled for law enforcement purposes;
- geological and geophysical information and data, including maps, or information concerning wells;
- personnel, medical, or other information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

10 CFR 2.790 specifies the procedures and requirements for persons to submit sensitive information to NRC so that it will be properly protected from disclosure. The text of 10 CFR 2.790 may be found in Appendix J of this report. 10 CFR 2.790 is also available electronically at <<http://www.nrc.gov/NRC/CFR/PART002/part002-0790.html>>.

Response from the Licensee or Applicant: Provide the following for any information submitted regarding a proposed change of control that is considered to be sensitive or proprietary:

- A statement requesting that a document be withheld in whole or part from public disclosure on the grounds that it contains sensitive information.
- An affidavit that:

TERMINATION OF ACTIVITIES

Protection of Sensitive Information

- Identifies the document or part sought to be withheld and the position of the person making the affidavit.
- Contains a full statement of the reasons why it is claimed that the information should be withheld from public disclosure. Such statement must include information regarding:
 - whether the information has been held in confidence by its owner;
 - whether the information is of a type customarily held in confidence by its owner;
 - whether the information was transmitted to and received by NRC in confidence;
 - whether the information is available in public sources;
 - whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

An affidavit submitted by a company must be executed by an officer or upper-level management official. This individual must have been both specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit must be executed by the owner of the information, even though the information sought to be withheld is submitted by another person.

The statement and affidavit must be submitted at the same time that the information sought to be withheld is filed with NRC. The information sought to be withheld should be detailed separately, with any information submitted in the affidavit as a trade secret, confidential, or privileged commercial or financial information so indicated.

Notes:

- Anyone submitting a request to withhold information from public disclosure should thoroughly review 10 CFR 2.790 and be familiar with its requirements and limitations.
- Anyone submitting commercial or financial information they believe to be privileged, confidential, or a trade secret must remember that the policy of the Commission is to achieve an effective balance between legitimate concerns for the protection of competitive positions and the right of the public to be fully apprized of the basis for, and effects of, licensing or rulemaking actions. It is within the discretion of the Commission to withhold such information from public disclosure.
- NRC staff should review and follow the procedures in Appendix K when handling information that a licensee or applicant has requested be withheld from public disclosure.

Appendix A

United States Nuclear Regulatory Commission Form 313

NRC FORM 313 (8-1999) 10 CFR 30, 32, 33 34, 35, 36, 39 and 40	U. S. NUCLEAR REGULATORY COMMISSION	APPROVED BY OMB: NO. 3150-0120 EXPIRES:08/31/2002
<h2 style="margin: 0;">APPLICATION FOR MATERIAL LICENSE</h2>		
Estimated burden per response to comply with this mandatory information collection request: 7.4 hours. Submittal of the application is necessary to determine that the applicant is qualified and that adequate procedures exist to protect the public health and safety. Send comments regarding burden estimate to the Records Management Branch (T-6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by internet e-mail to bjs1@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0120), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.		

INSTRUCTIONS: SEE THE APPROPRIATE LICENSE APPLICATION GUIDE FOR DETAILED INSTRUCTIONS FOR COMPLETING APPLICATION. SEND TWO COPIES OF THE ENTIRE COMPLETED APPLICATION TO THE NRC OFFICE SPECIFIED BELOW.

<p>APPLICATION FOR DISTRIBUTION OF EXEMPT PRODUCTS FILE APPLICATIONS WITH:</p> <p>DIVISION OF INDUSTRIAL AND MEDICAL NUCLEAR SAFETY OFFICE OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS U.S. NUCLEAR REGULATORY COMMISSION WASHINGTON, DC 20555-0001</p> <p>ALL OTHER PERSONS FILE APPLICATIONS AS FOLLOWS:</p> <p>IF YOU ARE LOCATED IN:</p> <p>CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, PENNSYLVANIA, RHODE ISLAND, OR VERMONT, SEND APPLICATIONS TO:</p> <p>LICENSING ASSISTANT SECTION NUCLEAR MATERIALS SAFETY BRANCH U.S. NUCLEAR REGULATORY COMMISSION, REGION I 475 ALLENDALE ROAD KING OF PRUSSIA, PA 19406-1415</p> <p>ALABAMA, FLORIDA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, PUERTO RICO, SOUTH CAROLINA, TENNESSEE, VIRGINIA, VIRGIN ISLANDS, OR WEST VIRGINIA, SEND APPLICATIONS TO:</p> <p>SAM NUNN ATLANTA FEDERAL CENTER U.S. NUCLEAR REGULATORY COMMISSION, REGION II 61 FORSYTH STREET, S.W., SUITE 23T85 ATLANTA, GEORGIA 30303-8931</p>	<p>IF YOU ARE LOCATED IN:</p> <p>ILLINOIS, INDIANA, IOWA, MICHIGAN, MINNESOTA, MISSOURI, OHIO, OR WISCONSIN, SEND APPLICATIONS TO:</p> <p>MATERIALS LICENSING SECTION U.S. NUCLEAR REGULATORY COMMISSION, REGION III 801 WARRENVILLE RD. LISLE, IL 60532-4351</p> <p>ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, HAWAII, IDAHO, KANSAS, LOUISIANA, MONTANA, NEBRASKA, NEVADA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, PACIFIC TRUST TERRITORIES, SOUTH DAKOTA, TEXAS, UTAH, WASHINGTON, OR WYOMING, SEND APPLICATIONS TO:</p> <p>NUCLEAR MATERIALS LICENSING SECTION U.S. NUCLEAR REGULATORY COMMISSION, REGION IV 611 RYAN PLAZA DRIVE, SUITE 400 ARLINGTON, TX 78011-8064</p>
PERSONS LOCATED IN AGREEMENT STATES SEND APPLICATIONS TO THE U.S. NUCLEAR REGULATORY COMMISSION ONLY IF THEY WISH TO POSSESS AND USE LICENSED MATERIAL IN STATES SUBJECT TO U.S. NUCLEAR REGULATORY COMMISSION JURISDICTIONS.	

1. THIS IS AN APPLICATION FOR <i>(Check appropriate item)</i> <input type="checkbox"/> A. NEW LICENSE <input type="checkbox"/> B. AMENDMENT TO LICENSE NUMBER _____ <input type="checkbox"/> C. RENEWAL OF LICENSE NUMBER _____	2. NAME AND MAILING ADDRESS OF APPLICANT <i>(Include Zip code)</i>
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3. ADDRESS(ES) WHERE LICENSED MATERIAL WILL BE USED OR POSSESSED	4. NAME OF PERSON TO BE CONTACTED ABOUT THIS APPLICATION TELEPHONE NUMBER
------------------------------------------------------------------	----------------------------------------------------------------------------------

SUBMIT ITEMS 5 THROUGH 11 ON 8-1/2 X 11" PAPER. THE TYPE AND SCOPE OF INFORMATION TO BE PROVIDED IS DESCRIBED IN THE LICENSE APPLICATION GUIDE.

5. RADIOACTIVE MATERIAL a. Element and mass number; b. chemical and/or physical form; and c. maximum amount which will be possessed at any one time.	6. PURPOSE(S) FOR WHICH LICENSED MATERIAL WILL BE USED.
7. INDIVIDUAL(S) RESPONSIBLE FOR RADIATION SAFETY PROGRAM AND THEIR TRAINING EXPERIENCE	8. TRAINING FOR INDIVIDUALS WORKING IN OR FREQUENTING RESTRICTED AREAS.
9. FACILITIES AND EQUIPMENT	10. RADIATION SAFETY PROGRAM.
11. WASTE MANAGEMENT.	12. LICENSEE FEES <i>(See 10 CFR 170 and Section 170.31)</i> FEE CATEGORY _____ AMOUNT ENCLOSED \$ _____

13. CERTIFICATION. *(Must be completed by applicant)* THE APPLICANT UNDERSTANDS THAT ALL STATEMENTS AND REPRESENTATIONS MADE IN THIS APPLICATION ARE BINDING UPON THE APPLICANT.

THE APPLICANT AND ANY OFFICIAL EXECUTING THIS CERTIFICATION ON BEHALF OF THE APPLICANT, NAMED IN ITEM 2, CERTIFY THAT THIS APPLICATION IS PREPARED IN CONFORMITY WITH TITLE 10, CODE OF FEDERAL REGULATIONS, PARTS 30, 32, 33, 34, 35, 36, 39 AND 40, AND THAT ALL INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF.

WARNING: 18 U.S.C. SECTION 1001 ACT OF JUNE 25, 1948 62 STAT. 749 MAKES IT A CRIMINAL OFFENSE TO MAKE A WILLFULLY FALSE STATEMENT OR REPRESENTATION TO ANY DEPARTMENT OR AGENCY OF THE UNITED STATES AS TO ANY MATTER WITHIN ITS JURISDICTION.

CERTIFYING OFFICER -- TYPED/PRINTED NAME AND TITLE	SIGNATURE	DATE
----------------------------------------------------	-----------	------

FOR NRC USE ONLY					
TYPE OF FEE	FEE LOG	FEE CATEGORY	AMOUNT RECEIVED	CHECK NUMBER	COMMENTS
			\$		
APPROVED BY				DATE	

Appendix B

Change of Control of Certain Generally Licensed Devices

Change of Control of Certain General Licenses

Criteria: Persons using generally licensed devices in accordance with 10 CFR Parts 31, 40, or 70 are required to notify and receive the consent of NRC before the transfer of control over the license.

General Licenses for Byproduct Materials (10 CFR Parts 30 and 31)

10 CFR Part 31 issues general licenses for certain devices containing byproduct materials and a general license for ownership of byproduct material. 10 CFR 31.2(a) states that “The general licenses provided in this part are subject to the provisions of . . . §§ 30.34(a) to (e) . . . unless indicated otherwise in the language of the general license.”

10 CFR 30.34(b) states that no license nor any right under a license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Certain general licensees under Part 31 are subject to Section 30.34(b). Each type of general license described in the NRC regulations is described below:

31.3 Certain Devices and Equipment

10 CFR 31.3 issues a general license to “transfer, receive, acquire, own, possess, and use” byproduct material incorporated in static elimination devices and ion generating tubes. General licensees under this section are subject to the requirements of Section 30.34(b) and NRC must give prior consent to any transfer of control over the license.

31.5 Certain Measuring, Gauging, or Controlling Devices

10 CFR 31.5 establishes the requirements for certain generally licensed measuring, gauging, or controlling devices to certain persons. These generally licensed devices can be transferred in one of three ways:

- The device may be transferred to any person holding a specific NRC or Agreement State license authorized to receive the device. Within 30 days after the transfer, the general licensee must furnish NRC with a report that identifies the device by manufacturer’s name and model number and the name and address of the person receiving the device. No report is required if the device is transferred to the specific licensee in order to obtain a replacement device.
- The device may be transferred to another general licensee if the device remains in use at a particular location. The transferor shall give the transferee a copy of this section of the NRC regulations and any safety documents identified in the label of the device. Within 30 days after the transfer, the general licensee must furnish NRC with a report that identifies the device

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by manufacturer's name and model number and the name and address of the person receiving the device.

- The device may be transferred to another general licensee if the device is held in storage in the original shipping container at its intended location of use, prior to initial use by a general licensee.

Any general licensee under this section must respond to written requests from NRC to provide information relating to the general license, including possible changes of control over the license, within 30 calendar days of the date of the request (or other time specified in the request). If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with written justification as to why it cannot comply.

31.7 Luminous Safety Devices for Use in Aircraft

10 CFR 31.7 issues a general license to "own, receive, acquire, possess, and use" licensed material in the form of luminous safety devices for use in aircraft. The section does not expressly authorize transfer of these devices. The general licensee will at some point transfer these generally licensed devices at the end of their service lives to the manufacturer or other specifically licensed person for disposal. An aircraft equipped with one or more of these devices may be sold several times over the course of its useful life. Because 10 CFR 31.78 does not address change of control over the general license, general licensees under this section are subject to the requirements of Section 30.34(b). NRC must give prior consent to any transfer of control over the general license.

31.8 Americium-241 in the Form of Calibration or Reference Sources

10 CFR 31.8 issues a general license to "own, receive, acquire, possess, use, and transfer" americium-241 (Am-241) in the form of calibration or reference sources. The regulation states that the general licensee is expressly subject to the provisions of 10 CFR 30.34(b). NRC must give prior consent to any transfer of control over the license.

31.9 General License to Own Byproduct Material

10 CFR 31.9 issues a general license to own byproduct material without regard to quantity. The regulation states that a general licensee under this section is not authorized to transfer byproduct material, except as authorized in a specific NRC or Agreement State license.

This regulation refers to the situation in which a company retains title to the byproduct material but does not possess or use it. A company, for example, may lease byproduct material to another for its use. In such a case, the lessor has a general license to own the material; the lessee

must have either a specific license to possess and use the material, or a general license if it fits within one of the categories of general licenses in Part 31. NRC has concluded that mere ownership, without a greater exercise of control over byproduct material, does not represent a regulatory concern. The general licensee is not required to notify NRC prior to the transfer of ownership.

31.10 General License for Strontium-90 in Ice Detection Devices

10 CFR 31.10 issues a general license to “own, receive, acquire, possess, use, and transfer” strontium-90 in ice detection devices, in limited quantities. Because 10 CFR 31.10 does not address transfer of control of these general licenses, general licensees under this section are subject to the requirements of Section 30.34(b). NRC must give prior consent to any transfer of control over the license.

31.11 General License for Use of Byproduct Material for Certain *In Vitro* Clinical or Laboratory Testing

10 CFR 31.11 issues a general license for certain medical and veterinary personnel to receive, acquire, possess, transfer, or use, for a number of specified tests, limited quantities of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, selenium-75, and mock iodine-125 (iodine-129 and AM-241). The regulation states that the general licensee shall not transfer the byproduct material except to a person authorized to receive it under an NRC or Agreement State general license conferred by Section 31.11 or Agreement State equivalent, or to a specific Part 35 license.

This regulation establishes a registration system. Under it, a general licensee cannot initially receive, acquire, possess, use, or transfer byproduct material unless he has filed a registration form with NRC. The certificate need not be filed if the general licensee has a license that authorizes the medical use of byproduct material that was issued under 10 CFR Part 35. If any of the information reported on the form changes, the general licensee must file a report within 30 days **after** the effective date of the change. Such a change would include transfers of control over the license. Since 10 CFR 31.11 does address transfer of these generally licensed test kits, the general licensee is not required to notify NRC prior to the transfer.

Persons holding general licenses described in 10 CFR 31.3, 31.7, 31.8, and 31.10 are required to notify and receive consent from NRC before a change of control over the license. These general licensees should carefully review Chapter 5 of this report.

General Licenses for Source Materials (10 CFR Part 40)

10 CFR 40.21-40.26 issue general licenses for byproduct and source material. Sections 40.27 and 40.28 issue general licenses for custody and long-term care of radioactive material under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

Section 40.46 states that no license issued or granted pursuant to the regulations in Part 40 shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the AEA and gives its consent in writing. Certain general licenses under Part 40 are subject to Section 40.46. Each type of general license issued in Part 40 is described below.

40.21 General License to Receive Title to Source or Byproduct Material

10 CFR 40.21 issues a general license authorizing the receipt of title to source or byproduct material without regard to quantity. This general license does not authorize any person who may hold title to source material to receive, possess, use, or transfer source material. This provision is similar to the general license for ownership of byproduct material located at 10 CFR 31.9. NRC has concluded that mere ownership, without a greater exercise of control over source or byproduct material, does not represent a regulatory concern. The general licensee is not required to notify NRC prior to a transfer of ownership.

40.22 Small Quantities of Source Material

10 CFR 40.22 issues a general license to commercial and industrial firms, research, educational and medical institutions, and certain Government agencies to use and transfer not more than fifteen pounds of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material pursuant to this general license may not receive more than a total of 150 pounds of source material in any one calendar year. Because 10 CFR 40.22 does not address change of control over these general licenses, general licensees under this section are subject to the requirements of Section 40.46.

40.23 General License for Carriers of Transient Shipments of Natural Uranium Other Than in the Form of Ore or Ore Residue

10 CFR 40.23 issues a general license to any person to possess a transient shipment of natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms. This section does not authorize the general licensee, generally a common carrier, to transfer the licensed material.

General licensees under this section are not subject to the requirements of Section 40.46. In general, common carriers are exempt from the requirements of Part 40, to the extent that they transport or store source material in the regular course of the carriage for another or storage incident to that carriage. Typically, this general license is issued to common carriers and applies only to ensure physical safeguards of the material.

40.25 General License for Use of Certain Industrial Products or Devices

10 CFR 40.25 issues a general license to receive, acquire, possess, use, or transfer depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device. General licensees must file NRC Form 244 within 30 days after the initial receipt or acquisition of depleted uranium. Form 244 requires the following information:

- Name and address of the registrant;
- A statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium, and designed to prevent transfer of such depleted uranium (in any form, including metal scrap) to persons not authorized to receive it; and
- Name, address, and telephone number of the individual authorized to act for and on behalf of the registrant in supervising the licensed material.

Within 30 days of the transfer, the transferor must report the transfer in writing to NRC. This report shall include the name and address of the person receiving the source material pursuant to the transfer.

40.26 General License for Custody and Long-Term Care of Residual Radioactive Material Disposal Sites

10 CFR 40.26 issues a general license to receive title to, own, or possess byproduct material as defined in this part without regard to form or quantity. The general license applies to a person with a specific source material license for extraction of uranium from uranium ore. The license permits the specific licensee to temporarily possess byproduct material onsite without violating its specific license. No authority is given in the general license to transfer this generally licensed byproduct material. The regulation states that the general licensee is expressly subject to the provisions of 10 CFR 40.46. NRC must give prior consent to any transfer of control over the specific license. This would also meet the requirement for prior NRC approval of transfer of control over the general license.

40.27 General License for Custody and Long-Term Care of Residual Radioactive Material Disposal Sites

10 CFR 40.27 issues a general license for the custody and long-term care of reclaimed or closed uranium or thorium mill tailing sites after remedial action or closure under Title I of UMTRCA. The general license only applies to the DOE or another Federal agency designated by the President. There is no termination of this general license.

40.28 General License for Custody and Long-Term Care of Uranium or Thorium Byproduct Materials Disposal Sites

10 CFR 40.28 issues a general license for the custody and long-term care of uranium or thorium mill tailings sites closed under Title II of UMTRCA. For disposal sites governed under the provisions of this section, DOE, or another Federal agency, will prepare and submit the Long-Term Surveillance Plan (LTSP), unless the State, at its option, decides to take custody of the site and be included in the general license. There is no termination of this general license.

In general, there is no transfer of control concern in the case of general licensees under Sections 40.27 and 40.28 because the long-term custodian will be the U.S. Government under 40.27, and the U.S. Government or a State (at its option) under 40.28.

NRC will typically not require prior notification of transfers of control of general licenses under 10 CFR 40.27. NRC may require prior notification of changes of control under 10 CFR 40.28 if NRC does not require long-term Government custody under 10 CFR 40.28(f). Section 40.28(f) states that, in cases where NRC determines that transfer of title of land used for disposal of any byproduct materials to the United States or any appropriate State is not necessary to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property, NRC will consider specific modifications of the custodial agency's LTSP provisions on a case-by-case basis. Where the general licensee is not necessarily the U.S. Government or a State, as here, NRC would likely require prior notification of transfers of control.

In conclusion, general licenses issued under Sections 40.22 and 40.26 are subject to the transfer of control provisions of Section 40.46.

Persons possessing generally licensed devices described in 10 CFR 40.22 and 40.26 are required to notify and receive consent from NRC before a change of control. These general licensees should carefully review Chapter 5 of this report.

General Licenses for Special Nuclear Materials (10 CFR Part 70)

All persons controlling generally licensed devices and materials containing special nuclear materials are subject to the requirements of 10 CFR 70.36. This regulation requires that general licensees notify NRC prior to any change of control of licensed materials and that NRC consent to the transfer in writing. The only exception would be in the case of a general license issued by NRC or an Agreement State that specifically exempts the general licensee from the requirement to notify and receive the consent of the appropriate regulatory agency prior to any change of control.

70.19 General License for Calibration or Reference Sources

Section 70.19 issues a general license to the following persons:

- Any person in a non-Agreement State who holds a specific license to receive, possess, use, and transfer byproduct, source, or special nuclear material;
- Any Government agency that holds a specific license that authorizes it to receive, possess, use, or transfer byproduct, source, or special nuclear material;
- Any person in an Agreement State who holds a specific license to receive, possess, use, and transfer special nuclear material.

Persons who receive title to, own, acquire, deliver, receive, possess, use, or transfer plutonium in the form of calibration or reference sources may not transfer, abandon, or dispose of the source except by transfer to a person authorized by a license from NRC or an Agreement State to receive the source. Because 10 CFR 70.19 does not otherwise address transfer of control of these general licenses, general licenses under this section are subject to the requirements of 10 CFR 70.36. NRC must give prior consent to any transfer of control over these general licenses.

70.20 General License to Own Special Nuclear Material

10 CFR 70.20 issues a general license to receive title to and own special nuclear material without regard to quantity. A general licensee under this section is not authorized to transfer special nuclear material under this section, although title or ownership of the special nuclear material may be transferred without notification to, and consent from, NRC.

70.20a General License to Possess Special Nuclear Material for Transport

This section issues a general license to any person to possess certain quantities of certain types of strategic special nuclear material and irradiated reactor fuel during normal carriage for another person, or during storage related to the carriage. 10 CFR 70.20a states that the carrier (the general licensee) under this section is specifically exempt from the requirements of Section 70.36. The

general licensee is not required to notify NRC prior to any transfer occurring during normal carriage.

70.20b General License for Carriers of Transient Shipments of Formula Quantities of Strategic Special Nuclear Material, Special Nuclear Material of Moderate Strategic Significance, Special Nuclear Material of Low Strategic Significance, and Irradiated Reactor Fuel

Section 70.20b issues a general license to any person to possess transient shipments of certain kinds and quantities of special nuclear material. 10 CFR 70.20b states that the carrier (the general licensee) under this section is specifically exempt from the requirements of Section 70.36. The general licensee is not required to notify NRC prior to any transfer occurring during normal carriage.

Persons possessing generally licensed devices described in 10 CFR 70.19 are required to notify and receive consent from NRC before a change of control. These general licensees should carefully review Chapter 5 of this report.

Response from Applicant: Persons possessing generally licensed devices described in 10 CFR 31.3, 31.7, 31.8, 31.10, 40.22, 40.26, and 70.19 should provide the information described in Appendix E of this report about any proposed change of control.

Appendix C

Legal Definition of Transfer of Control

Transfer of Control – Materials Licenses

In general, no NRC license for materials may be transferred, assigned, or disposed of unless NRC gives its prior consent in writing. Relevant statutory and regulatory provisions are as follows:

Section 184 of the AEA states, in part:

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

10 CFR 30.34(b) states:

Similar provisions are stated at 10 CFR 40.46 and 70.36.

The purpose of these regulations is to allow NRC to assure that licensees provide notification whenever business decisions could involve changes in the corporate form(s) responsible for management oversight, control, or radiological safety of licensed materials.

Case law has not completely addressed the definition of “control,” in either the regulations or Section 184. However, in *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350 (1990), the Atomic Safety and Licensing Appeal Board stated, “[C]ontrol of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used.” *Id.* at n. 46. The Appeal Board went on to note, “In the instance of a corporate Part 30 or Part 50 licensee, that control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.” *Id.* at 367 (emphasis in original).

In 1995, an Atomic Safety and Licensing Board took a broader view of Section 184. In *Safety Light Corp.* (Bloomsburg Site Decommissioning and License Renewal Denials), LBP-95-9, 41 NRC 412, 451 (1995), a case involving transfer of byproduct materials licenses, it stated, “On its face, Section 184 not only broadly prohibits all manner of transfers, assignments, and disposals of NRC licenses, but also all manner of actions that have the effect of, in any way, directly or indirectly, transferring actual or potential control over a license without the agency’s knowledge and express written consent.” However, not all business decisions of licensees or their parent entities require NRC consent. For example, internal changes that have no impact on structure or funding of a licensee do not require notice to NRC. On the other hand, changes of ownership or control resulting from legal changes such as mergers, buy-outs, or majority stock transfers do require prior consent. In some cases, internal management adjustments and actual changes of control may be difficult to distinguish. Therefore, it is imperative that licensees notify

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the Commission of not only actual, but suspected changes of control so that the agency may make a determination.

For example, the parent corporation of a wholly-owned licensee proposed to merge with another corporation. The licensee, a part-owner and operator of a reactor facility, would, under the proposed merger, remain the holder of the license. Its personnel and operations would be unaffected. The parent corporation's indirect control of the license was eliminated (as opposed to transferred to another entity); the licensee indicated to the agency that it foresaw no change in control. The licensee provided NRC with full documentation of the proposed changes. The Commission was therefore able to fully review the transactions, and agreed there was no change of control.

In cases where a transferee proposes to purchase a licensed operation, and the transferor continues in business as a separate entity without the license, the transferee must submit notification to the Commission that reflects both the change in identity of the licensee and any other pertinent changes in the operation. The transferee can always apply for a new license by providing a complete application, for which it may use the transferor's docketed documents as a basis. The transferor is also obligated to notify NRC of the proposed change of control; furthermore, if NRC issues a new license, the transferor must request termination of its license in a separate proceeding.

Appendix D

Examples of Change of Control

The following examples describe what constitutes a change of control or ownership. These examples are based on previous cases reviewed by NRC.

Direct Change of Control

(1) The transfer of “management-related responsibilities” from one licensee to another constitutes a change of control. For example, The Acme Company filed an application to transfer control of its possession-only license for the ABC facility to XYZ, Inc. for all maintenance, characterization, decontamination, dismantling, decommissioning, and other management-related responsibilities, including the following:

- Responsibility for safely maintaining the containment vessel and performing characterization activities changed from The Acme Company to XYZ, Inc.
- XYZ, Inc. would take responsibility from The Acme Company for administration of all facility functions, for radiation safety activities, and for providing on-site management and continuing oversight of production activities.
- The appointment of members to The Acme Company Radiation Safety Committee and the reporting of the Committee would change from The Acme Company president to an XYZ, Inc. vice president.
- The president of XYZ, Inc. would have the authority to request audits and would receive audit reports instead of the president of The Acme Company.
- The responsibility for procedure development and implementation would change from The Acme Company to XYZ, Inc.
- The responsibility for records retention and reporting would change from The Acme Company to XYZ, Inc.
- The organization chart for the facility would be changed to reflect the addition of XYZ, Inc. as a licensee.

Under this arrangement, XYZ, Inc. would be added as a possession-only licensee for the ABC facility. Except for the above-mentioned management-related responsibilities, The Acme Company’s duties as a licensee would not otherwise be affected. NRC approved the transfer, concluding that XYZ, Inc. was qualified to be a joint holder of the facility license for the management-related functions, and that the transfer was otherwise consistent with the applicable provisions of law, regulations, and orders issued by NRC (subject to certain conditions).

Indirect Change of Control

(1) A licensee was a wholly-owned subsidiary of its parent corporation. The licensee was engaged in business associated with Part 30 byproduct material licenses. The parent entity sold its entire interest in the licensee to the individuals serving as President and Vice-Presidents of that

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subsidiary. This transaction, a sale of 100% of the stock of the NRC-licensed subsidiary, constituted a “transfer of control of any license” for the purposes of Section 184. Before the sale, those who possessed dominion over the full range of the operations of the parent entity had the authority, if they desired to exercise it, to determine the licensee’s activities under the licenses by reason of the licensee’s status as a wholly-owned subsidiary. Upon completion of the sale, the parent entity’s management necessarily relinquished all right to dictate how the licensed activities should be conducted. Rather, the full right to direct those activities — and thus to control the licenses themselves — became vested in the licensee’s new owners, subject to the requirement of conformity to the licenses. *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350, 363-65 (1990).

(2) A materials licensee, Licensee, merged with another company, Holding Co., which was the wholly-owned subsidiary of Buyer. This merger was accomplished in two steps: (1) Buyer was empowered to designate a majority of Licensee’s Board of Directors; (2) Licensee was later merged into Holding Co. In sum, Licensee merged with another company to become a wholly-owned subsidiary of the parent. NRC concluded that an indirect change of control had occurred.

(3) A materials licensee was wholly owned by Parent Corporation. Seventy percent of Parent Corporation’s stock was acquired by a holding company. The holding company was, in turn, wholly owned by Acquiring Corporation. Shortly after Parent Corporation notified NRC of the transaction, Acquiring Corporation stated in a letter to NRC that:

- The transaction would not result in any changes in Parent Corporation’s operations relating to the license;
- The transaction would not result in any change to the license, its management, its personnel (including the Radiation Safety Officer), or the licensee’s name; and
- Acquiring Company pledged to abide by the terms of the license.

(4) Parent Corporation sold substantially all of the assets of its wholly-owned subsidiary, a materials licensee, to Buyer. Following the sale, the management of the licensee took the form of three bodies with discrete functions:

- Buyer’s Board of Directors had ultimate decision-making power, control and authority over the licensee’s operations, including oversight of day-to-day operations and responsibility for the licensee’s executives, management and employees.
- A new governing board was established for the licensee. None of its members were affiliated with Buyer, but the board was subject to the ultimate decision and control of Buyer.
- Parent Corporation and Buyer established a committee to advise Buyer on various matters relating to the licensee, including strategic planning and approval of the licensee’s Chief Executive Officer.

In addition, Parent Corporation and Buyer entered into an agreement, under which the parties intended the licensee to manage and supervise licensed activities, and maintain full control and authority over licensed materials for the purpose of avoiding a change of control under AEA Section 184. However, Buyer retained elements of control under this agreement, including:

- Buyer is liable for the site (Parent Corporation is to indemnify Buyer when the liability involves licensed materials);
- Buyer is to maintain adequate resources to fund decommissioning;
- Buyer agreed to accept full responsibility for open inspection items and/or any resulting enforcement actions that could have arisen within the licensed facilities prior to and following the sale; and
- Buyer agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the NRC license.

Following the transaction, Parent Corporation and Buyer share some responsibilities, including paying all fees required to maintain the license, and making required filings. Buyer agreed to pay Parent Corporation 50% of the amount required for decommissioning financial assurance.

NRC determined that this sale of assets constituted a change of control under 10 CFR 30.34(b), 40.46, and 70.36, requiring prior notification to and consent of NRC. Buyer now has ultimate authority over the conduct of the licensed activities, even though employees of the licensee control daily operations. Buyer is empowered to decide when and how the license will be used; the change of ownership, combined with Buyer's extensive managerial authority, allows Buyer to determine the policies of the licensee. In addition, Buyer took on responsibilities in the area of license maintenance and financial assurance for decommissioning.

(5) A materials licensee (who was the transferor) sold its facility to Holding Company. Holding Company is wholly owned by Owner, which created Holding Company to control a number of its subsidiaries, including the licensee. Following the transaction, the licensee continued to operate the facility. The only changes were to the licensee's governing structure:

- The licensee changed its corporate status;
- Holding Company was empowered to elect a majority of the licensee's directors; and
- The licensee's name was not changed, but it is now identified to the public as an affiliate of Holding Company.

NRC determined that this sale constituted a change of control under 10 CFR 30.34(b), requiring prior notification to and consent of NRC, because Owner, through Holding Company, now has ultimate authority over the conduct of licensed activities, even though no changes occurred in personnel or facilities. Owner is empowered to decide when and how the license will be used.

APPENDIX D

The change of ownership, combined with Owner's managerial authority over the Board of Directors, results in control over the license by Owner.

(6) A materials licensee exchanged stock with and merged into Buyer through Holding Company, a wholly-owned subsidiary of Buyer. Holding Company was then dissolved, leaving the licensee a wholly-owned subsidiary of Buyer. The license itself was not transferred to Buyer, and the licensee reported no change in staff responsible for radiation safety. NRC found that this transaction constituted a change of control under 10 CFR 30.34(b), and issued a notice of violation (Severity Level IV) to the licensee, who failed to obtain NRC's prior written consent to the transaction.

No Change of Control

(1) A licensee notified NRC of a management services agreement with a contractor for the oversight of a plant, indicating that neither the agreement nor the specific changes in management would require prior NRC approval. The staff concurred with this assessment because the licensee unequivocally retained ultimate authority and control over, and responsibility for, safe plant operation and regulatory compliance. Provisions of the agreement that confirmed the licensee's control of plant operations included:

- The licensee retained ultimate responsibility and authority for budgetary controls, operating plans, policies, and procedures, regulatory matters, and the management direction of the plant.
- The licensee retained exclusive authority and responsibility to define the economic life of the plant, as well as to retire and decommission the plant.
- The licensee retained the power and authority to modify or terminate the authority and scope of services to be provided by the contractor.
- Management personnel provided by the contractor were approved by the licensee and served at the licensee's pleasure.
- The licensee retained responsibility for compliance with NRC requirements.
- Licensed operators in the control room were solely the licensee's employees.
- The licensee retained the right to terminate the agreement with or without cause.

In all cases, determining whether a transfer of control has taken place is the Commission's responsibility. Whenever an actual or suspected change in ownership or control may occur, the licensee must inform the Commission in order to comply with the license provisions of 10 CFR 30.34 (or similar provisions found in other sections of Title 10). This notification must include a complete, clear description of the transaction that will enable legal counsel to differentiate between name changes and actual changes of control. All notifications of change of control, as well as suspected changes, will be reviewed by NRC. NRC may request additional supplemental information so that each case may be properly evaluated.

(2) Substantially all the assets of four materials licensees were restructured, resulting in a change in corporate form. All four licensees were affiliated with the same parent, both before and after the transaction. In the case of each licensee, no changes were made to:

- Personnel having control over licensed activities (including the Radiation Safety Officer);
- The use, possession, location, or storage of licensed materials;
- The licensee's organization;
- The licensee's facility;
- The licensee's equipment;
- The licensee's procedures.

Following the restructuring, each licensee:

- Assumed full liability for facility decontamination;
- Agreed to abide by all commitments and representations previously made to NRC by the licensee in its old corporate form;
- Agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the license; and
- Accepted full liability and responsibility for the site.

Here, the entities and personnel remained the same, except for a change in corporate status. All four licensees were affiliates of the same parent entity prior to and following the transaction. No change of control occurred under 10 CFR 30.34(b); the licensees were not required to obtain NRC's prior written consent to the transaction.

(3) A materials licensee, wholly owned by Parent, sold one division of its operations to Buyer. The division that was sold did not involve licensed activities. Parent retained licensed activities under a different name. Following the sale, Licensee retained full control of and responsibility for licensed activity. However, Buyer owned the facility in which licensed activity took place, and jointly occupied the facility with Licensee. Both Licensee and Buyer wished to conduct licensed activities at the facility, with Buyer's employees conducting licensed activities under the supervision and control of Licensee, until Buyer moved to a new facility and obtained its own license.

NRC determined that this transaction, a change of ownership, did not constitute a change of control as to Parent and Licensee. The same licensee, under a different name, still controlled the licensed activity, and Licensee's parent did not change.

Appendix E

NRC Information Notice 97-30: Control of Licensed Material During Reorganizations, Employee- Management Disagreements, and Financial Crises

June 3, 1997

NRC INFORMATION NOTICE 97-30: CONTROL OF LICENSED MATERIAL DURING REORGANIZATIONS, EMPLOYEE-MANAGEMENT DISAGREEMENTS, AND FINANCIAL CRISES

Addressees

All material and fuel cycle licensees.

Purpose

The U.S. Nuclear Regulatory Commission is issuing this information notice to alert addressees to potential loss of control of licensed material during periods of reorganization, employee-management disagreements, and financial crises. It is expected that recipients will review the information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems. However, suggestions contained in this information notice are not NRC requirements; therefore, no specific action nor written response is required.

Description of Circumstances

Case 1: On June 12, 1996, NRC was notified that the employees of an NRC-licensed laboratory were leaving the facility because they claimed that they had not been paid in over a month. The licensee analyzed environmental and bioassay samples containing small amounts of byproduct, source, or special nuclear material. Before their departure, the employees informed the parent company that they had arranged for their customers to pick up their samples, containing small amounts of source material; locked and secured the building; and sent the facility keys to the parent company. The management of the parent company promptly sent someone to ensure that the facility was properly secured from unauthorized access. The management of the laboratory said that the employees had been paid and the problems were a result of a reorganization.

Case 2: On September 19, 1996, NRC was informed that a licensee had filed an involuntary petition for bankruptcy on April 30, 1996, without notifying NRC, and that the trustee intended to abandon the property. The licensee possessed two portable moisture/density gauges, each containing gigabecquerel (millicurie) quantities of cesium-137 and americium-241/beryllium sealed sources. NRC efforts to contact the licensee were unsuccessful. Communications with the trustee revealed that one of the gauges was stored at the licensee's facility; and the licensee's former Radiation Safety Officer (RSO) possessed the other gauge. The former RSO had formed his own company and maintained possession of the gauge after his company took over a project that the licensee had been working on at the time of the bankruptcy filing. The gauge was being stored at the home of an engineering technician, an employee of the former RSO's company. At NRC's request, the former RSO relocated the gauge to the NRC-licensed property where the other gauge was in storage.

Discussion

These cases demonstrate the potential for the security and control of licensed material to be compromised during periods of organizational instability. Licensees are reminded that in controlled or unrestricted areas, 10 CFR 20.1801 and 20.1802 requires them to secure stored material, and to control and maintain, under constant surveillance, licensed material that is not in storage. In addition, licensees must control access to restricted areas to protect individuals against undue risks from exposure to radiation and radioactive material. These requirements are especially important during periods of reorganization, employee-management disagreements, and financial crises, since these situations may result in decreased financial and personnel resources that may impact the ability to properly maintain control of the licensed material.

During times of instability, licensees are encouraged to take prompt and comprehensive inventories of all licensed material to ensure that all material is accounted for and properly secured. In addition, licensees should consider notifying NRC of such situations, so that NRC can verify that the material is properly secured and has not been released into the public domain in an uncontrolled manner. If notified early, NRC can help ensure that all necessary regulatory actions are completed. In cases of bankruptcy, licensees are required to make an immediate notification to NRC, pursuant to the regulations in 10 CFR 30.34(h), 40.41(f), and 70.32(a)(9). The actions that both the employees and management took in case 1 are a good example of how to properly maintain control of licensed material during a period of organizational instability. Licensees are ultimately responsible for the security and control of their licensed material regardless of their financial, staffing, or organizational situation.

Licensees seeking to transfer control of a license are reminded of the regulation in 10 CFR 30.34(b), which requires them to obtain written consent from the Commission when transferring control of a license. Licensees seeking to transfer control of licensed material only must verify that the transferee's license authorizes the receipt of the type, form, and quantity of material to be transferred pursuant to 10 CFR 30.41(c), 40.51(c), and 70.42(c). This type of transfer allows NRC to ensure that the transferee is aware of the safety and regulatory requirements, associated with the material, that occur during the licensing and inspection processes. Both the transferor (i.e., the shipper) and transferee (i.e., the recipient) may be subject to enforcement actions in cases where a licensee transfers licensed material to unlicensed or unauthorized entities.

In the case where a licensee abandons its licensed material instead of properly disposing of, or transferring, the material to another licensed entity, public health and safety may be greatly compromised. Irretrievable well logging sealed sources are the only type of material that may be abandoned, pursuant to the regulations in 10 CFR 39.15. All other licensed material may not be abandoned since members of the public, unaware of the radiological hazards, may handle these materials and be exposed to ionizing radiation unnecessarily. A licensee that abandons licensed material is subject to substantial civil penalties, up to \$100,000 per day, as well as criminal sanctions. In addition, a licensee may lose its license to use radioactive material since

abandoning licensed material demonstrates both a fundamental breakdown in the licensee's ability to control material and, at least, careless disregard for public health and safety. Action may also be taken against the persons involved in the abandonment.

Related Generic Communications

Other instances that may affect a licensee's ability to properly maintain control of licensed material, such as bankruptcy, are addressed in Information Notices 93-100, "Reporting Requirements for Bankruptcy," issued December 22, 1993.

This information notice requires no specific action nor written response. If you have any questions about the information in this notice, please contact the technical contact listed below or the appropriate Regional Office.

signed by

Donald A. Cool, Director
Division of Industrial and Medical Nuclear Safety
Office of Nuclear Material Safety and Safeguards

Technical contact: Mark A. Sitek, NMSS
Telephone: 301-415-6155
E-mail: mas6@nrc.gov

Appendix F

Faxable Version of Information Needed for Transfer of Control Application

Be sure to include a contact name and either Regional or Headquarters telephone numbers for follow-up information, as required.

USNRC Region _____
Telephone: () - _____

Contact: _____
Fax: () - _____

Information Needed for Transfer of Control

Definitions:

Control: Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.

Transferee: A transferee is an entity that proposes to purchase or otherwise gain control of an NRC-licensed operation.

Transferor: A transferor is an NRC licensee selling or otherwise giving up control of a licensed operation.

Licensees must provide full information and obtain NRC's **prior written consent** before transferring control of the license. Provide the following information concerning changes of control by the applicant (transferor and/or transferee, as appropriate). If any items are not applicable, so state.

1. Provide a complete description of the transaction (transfer of stocks or assets, or merger). Indicate whether the name has changed and include the new name. Include the name and telephone number of a licensee contact who NRC may contact if more information is needed.
2. Describe any changes in personnel or duties that relate to the licensed program. Include training and experience for new personnel.
3. Describe any changes in the organization, location, facilities, equipment or procedures that relate to the licensed program.
4. Describe the status of the surveillance program (surveys, wipe tests, quality control) at the present time and the expected status at the time that control is to be transferred.
5. Confirm that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or to NRC, as appropriate. These records include documentation of surveys of ambient radiation levels and fixed and/or removable contamination, including methods and sensitivity.
6. Confirm that the transferee will abide by all constraints, conditions, requirements and commitments of the transferor or that the transferee will submit a complete description of the proposed licensed program.

Appendix G

**Suggested Format for Supplemental
Information Regarding Bankruptcy
Submitted by Electronic Facsimile (FAX)**

The following pages contain a sample NRC letter to be sent (faxed) to companies declaring or about to declare bankruptcy and, if applicable, to the parent company or legally responsible representative.

APPENDIX G

(Licensee contact)
(Title of licensee contact)
(Address of licensee contact)

SUBJECT: POSSIBLE BANKRUPTCY NOTIFICATION INFORMATION

Dear (licensee contact):

It has come to our attention that (name of licensee) possessing NRC License No(s) _____ may have filed (or is considering filing) for bankruptcy. Please note that there are NRC requirements for licensees that are the subject of a bankruptcy filing, to immediately notify, in writing, the appropriate NRC Regional Administrator of this action.

NRC requirements for licensees that are the subject of a bankruptcy filing can be found in 10 CFR (U.S. Code of Federal Regulations) 30.34(h), 40.41(f), and 70.32(a)(9). (**Reviewer Note: Select all that apply.**) The purpose of the regulations is to ensure that public health and safety is adequately protected and that radioactive material is properly controlled.

Specifically, any licensee who is involved in a bankruptcy proceeding, either voluntarily or involuntarily, under any chapter of the bankruptcy law must notify the appropriate NRC Regional Administrator in writing immediately after the filing.

The requirements in these regulations apply to a bankruptcy proceeding, for or against: the licensee itself; an entity controlling the licensee; an entity listing the licensee as a property of the estate; or an affiliate of the licensee.

The regulations state that the notification must include the identity of the bankruptcy court in which the petition was filed and the date the petition was filed.

Because the regulations cited above require each licensee to provide the required notification, we request your assistance in providing to us the names, addresses and telephone numbers of any other entities who may be affected by the bankruptcy (i.e., other daughter companies of a bankrupt parent company, where the daughter has an NRC or Agreement State license).

Please note that even though a licensee may be involved in bankruptcy proceedings, NRC regulations and license conditions remain in full effect. Also, NRC licenses remain in full effect even beyond their stated expiration date, until terminated in writing by NRC. If the licensee no longer exists as an entity, the person with legal control of contaminated equipment or property transferred by the licensee is obligated to control all licensed materials and to decontaminate and decommission any facilities or equipment, and to comply with applicable NRC requirements.

If you need to close a building, you must first properly secure, dispose of, or transfer all licensed material that was in the building.

If you need to lay-off the RSO, you must first properly secure, dispose of or transfer all licensed material, and you must inform NRC of this situation.

We will be calling you soon to verify the current status of your situation and to confirm the disposition of licensed material. We may also conduct an inspection to aid us in our evaluation of your situation. We will continue to monitor your activities to ensure that either the facility is cleaned up and licensed material properly disposed of, or the company is able to exit bankruptcy and operate normally.

If you have any questions, we encourage you to contact (name of lead individual) at (toll-free telephone number).

Sincerely,

Chief, Materials Licensing Branch

License No.

Docket No.

Attachment: Information to Notify NRC of Bankruptcy

- Enclosures: (1) 10 CFR Part 30
- (2) 10 CFR Part 40
- (3) 10 CFR Part 70

Attachment
INFORMATION TO NOTIFY NRC OF BANKRUPTCY

1. Name of bankruptcy court where petition was filed. _____
2. Date bankruptcy petition was filed. _____

Your assistance is requested in identifying any other entities that may have NRC or Agreement State licenses that may be affected by the bankruptcy.

<u>Company Name</u>	<u>Address</u>	<u>Telephone Number</u>

Appendix H

Bankruptcy Review Team Procedures

Procedures for Bankruptcy Actions

NRC will establish a Bankruptcy Review Team (BRT) to review and act on bankruptcy notifications. The BRT will bring together various NRC offices and will be composed of members of: the relevant licensing office staff, the Office of the General Counsel (OGC), the Office of the Controller (OC), the Office of Enforcement (OE), the Division of Industrial and Medical Nuclear Safety (IMNS), and the Division of Waste Management (DWM).

Generally, once a petition for bankruptcy is filed, the assets of the debtor can be expended or distributed only with the supervision of the bankruptcy court and in accordance with statutory requirements and priorities. This procedure should ensure that bankruptcy cases are managed in a fully coordinated manner with OGC, OC, OE, and within NMSS divisions.

- Licensees are required under 10 CFR 30.34(h), 40.41(f), and 70.32(a)(9), to provide notification to the appropriate Regional Administrator, in writing, immediately after the filing of a voluntary or involuntary petition for bankruptcy by or against them. NRC staff may learn of a bankruptcy, however, by any means, including a letter from the licensee, a telephone call, or a newspaper report. If NRC Regional or Headquarters staff hears rumors, discovers information during an inspection, or comes across any information indicative of financial trouble, it should be reported to NRC management. NRC staff needs to contact licensee personnel to verify any bankruptcy information that is obtained, and to ensure that the required written notification is submitted by the licensee.
- After receiving a report that a licensee has filed for bankruptcy or that an involuntary petition has been filed against it, NRC staff must verify that all licensed material possessed by the licensee is being adequately controlled. The staff should immediately contact the licensee to verify the status of licensed material. A special inspection should be conducted, if necessary. Procedures for responding to inadequately controlled radioactive material are provided in Inspection Manual Chapter (IMC)-1301, "Radioactive Material Incidents That Do Not Require Activation of the NRC Incident Response Plan," and IMC-1303, "Requesting Emergency Acceptance of Radioactive Material by the Department of Energy."

If there is an immediate threat to public health and safety, staff can request emergency assistance from other Federal agencies in accordance with IMC-1301. If a bankrupt licensee is controlling its licensed material, but the situation has the potential to cause a significant health and safety hazard, requesting DOE emergency acceptance of the material may be an option. This procedure is intended for discrete sources confined to a single location. However, the need for emergency acceptance of other materials will be evaluated on a case-by-case basis.

- Timely reporting by license reviewers and inspectors of bankruptcies to NRC management will ensure early and thorough attention by NMSS, Regions, OC, and OGC staff to changes in the financial condition or corporate restructuring of licensees. The branch chief should, within 24 hours of receipt of a formal or informal bankruptcy notification, alert management, and make the following contacts to form a BRT for the case:

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- License Fee and Accounts Receivable Branch, OC, to give it an opportunity to make appropriate filings for any fees due NRC and to coordinate with OGC and Department of Justice (DOJ);
- Cognizant OGC staff, for legal assistance;
- Low-level Waste and Decommissioning Projects Branch, DWM, for coordination of financial viability and decommissioning financial assurance issues;
- OE, to review any potential enforcement matters;
- IMNS, for coordination of emergency response and generic materials licensee policy issues;
- Regional staff, to coordinate Regional inspection issues.
- NRC management will assign an individual as bankruptcy lead for the bankruptcy action. The BRT should develop a list of recipients to receive incoming information.
- The bankruptcy lead should promptly inform (by phone or fax) the licensee or the trustee, if one has been appointed, on learning of the bankruptcy filing, that bankruptcy will not relieve the licensee of its obligations to comply with NRC requirements, including the license, and that inspections and other NRC regulatory actions are not terminated upon filing of the petition for bankruptcy. OGC will notify the Bankruptcy Court that any trustee or receiver in bankruptcy retains the debtor licensee's legal obligations, including: public health, safety, and environmental obligations; NRC regulations; and license conditions. Any owner of contaminated property transferred by the licensee before completion of decommissioning must comply with all applicable NRC requirements, including obtaining an NRC license and completing decommissioning. Additionally, pursuant to Section 184 of the Atomic Energy Act, a reorganized entity emerging from Chapter 11 is required to receive the written approval of NRC prior to its assumption of control over licensed activities.

After this informal contact, NRC licensing staff, with the assistance of the OGC representative to the BRT, should:

- Provide the licensee, the bankruptcy court, any trustee or receiver in bankruptcy, or owner of property contaminated by licensee activities, with written notification of the licensee's obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license. A sample letter to be sent to a licensee discussing bankruptcy-related issues may be found at the end of this appendix.
- If the licensee no longer exists as an entity, provide any trustee, receiver or owner of contaminated property transferred by the licensee, with written notification of their obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license.

- The OGC representative to the BRT should determine whether the United States is represented in the bankruptcy proceeding and contact the Assistant United States Attorney or other DOJ attorney assigned to the bankruptcy proceeding, or should take necessary steps to secure representation of NRC's interests in the proceeding by DOJ. A sample letter addressed to the cognizant Deputy Attorney General or DOJ may be found at the end of this appendix.
- The BRT should assess the current public health and safety situation at the licensee's facility and any impacts the bankruptcy could have on licensed operations. This should include an in-house assessment of the extent of contamination and health risk posed by that contamination. This assessment would be based on the best information that is currently available. A public health, safety, and contamination assessment should be performed to support NRC discussions with the Environmental Protection Agency (EPA) and the Department of Energy (DOE); to support any petition to the bankruptcy court for priority in disbursements of the bankruptcy estate; and to determine if prompt action is necessary to secure the site or to take any other action required under the AEA. Such an assessment could provide important information to DOJ in its representation of NRC in bankruptcy proceedings, and so should also be made available to DOJ. Additionally, any steps to secure the site should be taken only after consultation with OGC, to ensure that NRC's rights to compel the debtor to satisfy its public health, safety, and environmental obligations, or to pursue any claim against the assets of the bankruptcy estate would not be unnecessarily prejudiced. Unless health and safety require immediate action, the staff should first consult with EPA and the involved state(s), to ensure that all available resources and means of securing the site are considered.
- The BRT should request OGC to obtain copies of all pertinent filings in the bankruptcy proceeding. The lead individual should maintain copies of these filings. The OGC representative on the BRT should coordinate with the DOJ to secure copies of all filings, by requesting that NRC be placed on the service list for the bankruptcy proceeding. The licensee might, as a courtesy, provide some copies of filings but has no obligation to do so.
- The BRT should decide if additional information is required from the licensee and provide a list of issues to be addressed. The OGC and OE representatives to the BRT should help prepare any Demands for Information, Orders, Notices of Violation, or other enforcement actions regarding the licensee, the trustee, or the receiver in bankruptcy.
- The lead individual should contact the appropriate EPA Regional Office and inform it of the bankruptcy. The lead individual should provide EPA staff with the results of our preliminary hazard evaluation. If the BRT considers that a "removal" action may be appropriate, discuss with EPA staff whether a "removal" action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) should be pursued (this can be done promptly without first scoring the site for inclusion on the National Priorities List, if justified). If EPA determines that the site does not warrant "removal" action, NRC may request EPA to conduct a CERCLA Preliminary Assessment and scoring of the site for potential remedial action under CERCLA. CERCLA procedures may be obtained by contacting the EPA. CERCLA procedures may also be found at <<http://www.epa.gov/superfund/oerr/whatis/cercla.htm>>. The request should be conveyed by letter to the appropriate EPA Region, with

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copies sent to EPA Headquarters. Please note that such a request would have to be coordinated with the Commission. The BRT would need to provide the Commission with: 1) what criteria would apply; 2) what effect this action would have on citizen suits; and 3) what State role there is. The OGC representative to the BRT should consult in all joint efforts with EPA and the States, to ensure decontamination and decommissioning of the site.

- The BRT should recommend if technical assistance contractor support is needed to analyze licensee financial information. If contract support is needed, the bankruptcy lead individual should coordinate the support through the DWM representative to the BRT.
- The BRT should take all necessary steps to ensure that Suggestions of Interest or Proofs of Claim are filed with the Bankruptcy Court, for such matters as licensing fees or civil penalties that may be due NRC, or for actions to maintain control of radioactive materials or to conduct site decommissioning. Regional enforcement staff should assist the OE representative to the BRT to determine whether any civil penalties are outstanding.
- The BRT should make recommendations on the need to draw on financial assurance instruments that may have been submitted by the licensee. Appendix I contains a detailed procedure for drawing on financial assurance instruments. The DWM representative to the BRT will assist the BRT by advising on the appropriate actions, information needs, and when and how to draw on the decommissioning financial assurance instrument. Management Directive 8.12, "Decommissioning Financial Assurance Instrument Security Program," discusses the applicable procedures for safeguarding decommissioning financial assurance instruments and discusses the signature authority for drawing on the instruments.
- The BRT should also consider the need for the preparation of additional legal papers, to be filed on behalf of NRC, with the bankruptcy court, to preserve the rights of NRC to require the debtor to expend available resources to decommission and to decontaminate the site. The OGC representative to the BRT should determine whether there are other NRC administrative proceedings or litigation pending or anticipated (i.e., civil penalties, fee collection) that may affect NRC staff actions in the bankruptcy proceeding.

SAMPLE LETTER TO DEPARTMENT OF JUSTICE

_____, Esquire
 Assistant United States Attorney
 Office of the United States Attorney

RE: _____ [name of licensee]
 BANKRUPTCY CASE NUMBER ____-____
 NRC License No. _____

Dear _____:

The United States Nuclear Regulatory Commission (NRC) has been recently made aware of the date of filing, bankruptcy filing of [licensee name], with the United States Bankruptcy Court for the [court's identity]. [licensee name] filed under Chapter [correct chapter number]. It possesses NRC License No. _____ which authorizes it to use [brief description of authorized licensed activities]. NRC is requesting that your office represent the Commission in the above referenced bankruptcy proceeding.

The primary concern of the Commission is the safe control of the nuclear material in the possession of [licensee name]. To this end, the Atomic Energy Act mandates that a license may not be transferred, even involuntarily, absent Commission approval. In addition, licensed material may only be transferred to authorized recipients in accordance with the Atomic Energy Act and the Commission's regulations at 10 CFR 30.41.

NRC would appreciate if you would inform the Bankruptcy Court, [licensee name]'s attorney, and the United States Trustee of NRC's interest in this case and of the requirements that:
 a) approval of the Commission is necessary for any license transfer; and b) radioactive material licensed under the above licenses must be properly transferred.

Thank you in advance for your assistance in this matter. If you have any questions on this matter, please contact [OGC Contact], OGC. He can be reached at (____) ____-____ or ____@nrc.gov.

Sincerely,

Assistant General Counsel for
 Rulemaking and Fuel Cycle

Enclosure: NRC License No. _____

**SAMPLE LETTER TO LICENSEE ACKNOWLEDGING
BANKRUPTCY NOTIFICATION**

[Name]

[Address]

SUBJECT: ACKNOWLEDGMENT OF _____ BANKRUPTCY NOTIFICATION

Dear _____:

This acknowledges your letter dated _____, informing NRC that _____
_____ filed for bankruptcy under Chapter 11 in Federal Bankruptcy Court on Date

Please be informed that the bankruptcy filing does not relieve _____ of its obligations to comply with NRC requirements, including those relating to security and control of licensed material; decontamination and decommissioning of contaminated facilities; and the retention of personnel required by NRC requirements (e.g., the Radiation Safety Officer (RSO), authorized users, etc.). Additionally, inspections of your activities will continue to occur.

If the RSO leaves your employ, you must first properly secure, dispose of, or transfer all licensed material, and you must inform NRC of this situation. If you need to close a building, you must first properly secure, dispose of, or transfer all licensed material that was in the building. NRC licenses remain in full effect even beyond their stated expiration date, until terminated in writing by NRC.

You may not (1) transfer control of your license without prior written NRC approval, or (2) transfer licensed material except as authorized by NRC regulations. You should ensure that your attorney and any trustee involved in the bankruptcy proceeding are aware of these obligations. Any person who takes control of licensed activities or possession of the licensed material including any contaminated equipment or property transferred by the licensee must first obtain an NRC license.

Please notify us immediately if you are unable to meet any of these conditions. Also, please notify us when the bankruptcy proceeding is completed.

Thank you for your cooperation in this matter. You may contact _____ at (____) ____ - ____ if you have any questions or information concerning the status of your license or activities.

Sincerely,

Appendix I

Procedures for Drawing on Financial Assurance Instruments

Letter of Credit

Before drawing on a letter of credit, the licensing office should contact the individual at the issuing bank who signed the letter of credit to determine the specific bank procedures needed to be followed to draw on the instrument. In these discussions, the following details should be resolved:

- where the transaction is to take place;
- whether the transaction needs to take place in person;
- what documents need to be presented (e.g., if the originals are needed);
- if there are deadlines on when the instrument can be drawn on;
- if there are deadlines before which the instrument cannot be drawn on;
- the form of the sight draft (a bill of exchange or draft payable when presented).

In consultation with the licensing office, Office of the Chief Financial Officer (OCFO), and Division of Waste Management (DWM), the Office of the General Counsel (OGC) should prepare the sight draft and the sight draft certification with the exact wording referenced in the letter of credit and in accordance with other letter of credit conditions and bank instructions. The letter of credit number needs to be referenced on the sight draft.

The Office Director, Deputy Office Director, Regional Administrator, or Deputy Regional Administrator should sign the sight draft and certify the sight draft certification. The certification should be notarized.

The appropriate individual should present the sight draft, sight draft certification, and other required documents at the bank in accordance with bank instructions.

As initial discussions are being held with the bank, OGC, OCFO, DWM, and licensing office staff should contact the trustee named in the standby trust agreement. The licensing office, OGC, OCFO, and DWM, in consultation with the trustee, should determine the method the trustee desires for transfer of the letter of credit funds. Arrangements for direct transfer of the funds to the trustee account must be made so that NRC does not directly acquire funds. NRC staff must not accept funds, even if instruments are made out to the trustee. NRC staff must never allow the bank to make any instrument payable to NRC or the licensee.

If the licensee is capable of directing the remediation, and has a decommissioning plan approved by NRC, it must give NRC 30 days notice if it intends to withdraw funds from the standby trust. The licensee also must complete, as specified in the standby trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

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If the licensee is capable of directing the remediation, but does not have a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the standby trust agreement — if the licensee has defaulted or is unwilling or unable to direct the remediation — licensing office staff, in consultation with OGC, OCFO, and DWM, will need to prepare instructions, in writing, and provide them to the trustee for disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10% of the amount held in the standby trust.

The Office of Nuclear Material Safety and Safeguards (NMSS) Office Director, NMSS Deputy Office Director, the applicable licensing office Regional Administrator, or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Surety Bond

OGC, OCFO, DWM, and licensing office staff should review the conditions in the bond before contacting the surety company.

Licensing office staff, in consultation with OGC, OCFO, and DWM, should prepare an Order to the licensee to fund the standby trust in the amount identified for the facility or to provide an alternative financial assurance instrument, and to prepare any other documents specified in the surety bond conditions.

If the licensee cannot meet these specified conditions in the surety bond, NRC staff should request that the licensee state such.

Licensing office staff, in consultation with OGC, OCFO, and DWM, should contact the surety bond company to determine what specific procedures need to be followed to draw on the instrument. Determine specific procedures for the following:

- where the transaction is to take place;
- whether the transaction needs to take place in person;
- what documents need to be presented;

- what form of the notification by NRC is desired.

OGC, OCFO, DWM, and licensing office staff should determine if the conditions for drawing on the bond have been met as stated in the surety bond. If so, NRC licensing office staff, in consultation with OGC, OCFO, and DWM, should prepare a notification of default, with the applicable supporting documents.

The NMSS Office Director, NMSS Deputy Office Director, the applicable Regional Administrator, or Deputy Regional Administrator must certify the notification documents and have certification notarized. These documents and other required documents should then be presented to the surety bond company in accordance with surety bond company instructions.

As initial discussions are being held with the surety company, licensing office staff, in consultation with OGC, OCFO, and DWM, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DWM, determine the method the trustee desires for transfer of the bond funds. Arrangements for direct transfer of the funds to the trustee account must be made so that NRC does not directly acquire funds. NRC staff must not accept funds, even if instruments are made out to the trustee. NRC staff must never allow the bank to make any instrument payable to NRC or the licensee.

If the licensee is capable of directing the remediation, but does not have a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation, but does not have a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the standby trust agreement — if the licensee has defaulted or is unwilling or unable to direct the remediation — licensing office staff, in consultation with OGC, OCFO, and DWM, will need to prepare instructions, in writing, and provide them to the trustee for disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10% of the amount held in the standby trust.

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The NMSS Office Director, NMSS Deputy Office Director, the applicable licensing office Regional Administrator, or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Escrow Agreement

Licensing office staff should contact the escrow agent to determine what specific procedures need to be followed to draw on the instrument. Determine specific procedures for the following:

- where the transaction is to take place;
- whether the transaction needs to take place in person;
- what documents need to be presented;
- what form of the notification by NRC is desired.

OGC, OCFO, DWM, and the licensing office should determine that the conditions for drawing on the escrow agreement have been met as stated in the escrow agreement.

In consultation with OGC, OCFO, and DWM, the licensing office should prepare the notification documents.

The NMSS Office Director, NMSS Deputy Office Director, and applicable Regional Administrator, or Deputy Regional Administrator, must certify notification documents and ensure that the certification is notarized.

Escrow agents normally assume fewer responsibilities than do trustees for standby trusts or trust agreements. Licensing office staff should, therefore, make sure that in no case does the NRC staff accept funds disbursed by the escrow agent directly to NRC.

If the licensee is capable of directing the remediation, and has a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the escrow and must complete, as specified in the escrow agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation, but does not have a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the escrow and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. NRC staff and the licensee should ensure that these modifications are acceptable to the escrow agent.

To disburse funds from the escrow agreement — if the licensee has defaulted or is unwilling or unable to direct the remediation — licensing office staff, in consultation with OGC, OCFO, and DWM, will need to prepare instructions, in writing, and provide them to the escrow agent for disbursement of the funds.

NRC will need to approve, in writing, all disbursements in excess of 10% of the amount held in the escrow account.

The NMSS Office Director, NMSS Deputy Office Director, the applicable licensing office Regional Administrator, or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Trust Agreement

Licensing office staff, in consultation with OGC, OCFO, and DWM, should contact the trustee named in the trust agreement to determine what specific procedures need to be followed to draw on the instrument. Determine specific procedures for the following:

- where the transaction is to take place;
- whether the transaction needs to take place in person;
- what documents need to be presented;
- what the form of any additional documents, needed to be provided by NRC, is desired.

Certificates of Deposit, Government Funds Deposits of Securities

Licensing office staff, in consultation with OGC, OCFO, and DWM, should contact the bank or fund agent to clarify the holdings in the account and determine what specific procedures need to be followed to draw on the instrument. Determine specific procedures for the following:

- where the transaction is to take place;
- whether the transaction needs to take place in person;
- what documents need to be presented (e.g., whether the original instruments need to be presented);
- what form of any endorsement documents is desired;
- what special procedures for converting the securities to cash are desired.

In consultation with OGC, OCFO, and DWM, the licensing office staff should prepare the documents needed in accordance with the instrument conditions and bank or fund agent instructions.

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The NMSS Office Director, NMSS Deputy Office Director, the applicable Regional Administrator, or Deputy Regional Administrator must certify the endorsement documents and ensure that the certifications are notarized. Appropriate NRC staff should present the endorsement documents and other required documents at the bank or to the fund agent, in accordance with bank or fund agent instructions.

Funds from CDs, government funds, and securities can be transferred to either a standby trust or an escrow account for disbursement. As initial discussions are being held with the surety company, licensing office staff, together with OGC, OCFO, and DWM staff, should contact the trustee named in the standby trust agreement or escrow agent named in the escrow agreement. In consultation with the trustee or escrow agent, the licensing office, OGC, OCFO, and DWM should determine the method the trustee or escrow agent desires for transfer of the securities. Arrangements for direct transfer of the funds to the trustee or escrow account must be made so that NRC does not directly acquire funds. NRC staff must not accept funds, even if instruments are made out to the trustee or escrow agent. NRC staff must never allow the CD or security assets to be made payable to NRC or to the licensee. Escrow agents normally assume fewer responsibilities than do trustees for standby trusts or trust agreements. Licensing office staff should, therefore, make sure that in no case does NRC staff accept funds disbursed by the escrow agent directly to NRC.

If the licensee is capable of directing the remediation, and has a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust or escrow and must complete, as specified in the standby trust or escrow agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation, but does not have a decommissioning plan approved by NRC, the licensee must give NRC 30 days notice if it intends to withdraw funds from the standby trust or escrow account and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. NRC staff and the licensee should ensure that these modifications are acceptable to the trustee or escrow agent.

To disburse funds from the standby trust or escrow agreement — if the licensee has defaulted or is unwilling or unable to direct the remediation — licensing office staff, in consultation with OGC, OCFO, and DWM, will need to prepare instructions, in writing, and provide them to the trustee or escrow agent for disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10% of the amount held in the standby trust or escrow account.

The NMSS Deputy Office Director, the applicable licensing office Regional Administrator, or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Parent Company Guarantee

After consultation with OGC, OCFO, and DWM, licensing office staff should contact the parent company to notify it that the licensee has defaulted or is unwilling or unable to complete decommissioning. The licensing office staff, in consultation with OGC, OCFO, and DWM, and the parent company should determine any specific procedures the parent company needs for requesting funding.

In consultation with OGC, OCFO, and DWM, the licensing office should prepare a document formally notifying the parent company that the licensee has defaulted or is unwilling or unable to complete decommissioning.

The NMSS Office Director, NMSS Deputy Office Director, the applicable Regional Administrator, or Deputy Regional Administrator must certify the letter and ensure that the certification is notarized.

A parent guarantee mechanism can be used with or without a standby trust agreement. If a standby trust agreement is not used, the licensing office staff, in consultation with OGC, OCFO, and DWM, should prepare instructions to the parent company as needed to decommission the licensee's facilities. The NMSS Office Director, NMSS Deputy Office Director, the applicable Regional Administrator, or Deputy Regional Administrator must certify the instruction letter and ensure that the certification is notarized.

If a standby trust agreement is used, as initial discussions are being held with the parent company, licensing office staff, together with OGC, OCFO, and DWM staff, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DWM should determine the method the trustee desires for transfer of the parent company funds. Arrangements for direct transfer of the funds to the trust account must be made so that NRC does not directly acquire funds. NRC staff must not accept funds, even if instruments are made out to the trustee. NRC staff must never allow the parent company to make any instrument payable to NRC or the licensee.

If the licensee is capable of directing the remediation, and has a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete, as specified in the standby trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

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If the licensee is capable of directing the remediation, but does not have a decommissioning plan approved by NRC, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the standby trust — if the licensee has defaulted or is unwilling or unable to direct the remediation — licensing office staff, in consultation with OGC, OCFO, and DWM, will need to prepare instructions, in writing, and provide them to the trustee for disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10% of the amount held in the standby trust.

The NMSS Office Director, NMSS Deputy Office Director, the applicable licensing office Regional Administrator, or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Self-Guarantee

In consultation with OGC, OCFO, OE, and DWM, the licensing office should prepare an order formally notifying the licensee that, under the self-guarantee, the licensee is required to fund the decommissioning of any contaminated facilities.

Appendix J

Protection of Sensitive Information Submitted to NRC (10 CFR 2.790)

Licenses or other persons required to submit sensitive information about a potential change of control should carefully review the provisions and requirements of 10 CFR 2.790.

NRC personnel receiving information that a licensee or applicant has submitted and requested to be exempted from disclosure in accordance with 10 CFR 2.790 must review the regulation as well as any applicable management directive or office instruction to ensure that sensitive information is appropriately safeguarded from release as public information. Procedures for the proper handling by NRC staff of sensitive information are described in Appendix K.

10 CFR 2.790 – Public Inspections, Exemptions, Requests for Withholding

- A. Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents, such records and documents do not include handwritten notes and drafts, including but not limited to correspondence to and from NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rule making proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying in NRC's Public Document Room, except for matters that are:
1. a. specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and
b. are in fact properly classified pursuant to such Executive order.
 2. Related solely to the internal personnel rules and practices of the Commission.
 3. Specifically exempted from disclosure by statute (other than 5 U.S.C.) 552(b), provided that such statute:
 - a. requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
 - b. establishes particular criteria for withholding or refers to particular types or matters to be withheld.
 4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
 5. Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission.
 6. Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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7. Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
 - a. could reasonably be expected to interfere with enforcement proceedings;
 - b. would deprive a person of a right to a fair trial or an impartial adjudication;
 - c. could reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - d. could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
 - e. would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
 - f. would reasonably be expected to endanger the life or physical safety of any individual.
 8. Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
 9. Geological and geophysical information and data, including maps, concerning wells.
- B. 1. A person who proposes that a document or a part be withheld in whole or part from public disclosure on the ground that it contains trade secrets or privileged or confidential commercial or financial information shall submit an application for withholding accompanied by an affidavit which:
- a. identifies the document or part sought to be withheld and the position of the person making the affidavit; and
 - b. contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The

- information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The applicant may designate with appropriate markings information submitted in the affidavit as a trade secret or confidential or privileged commercial or financial information within the meaning of 10 CFR 9.17(a)(4) of this chapter and such information shall be subject to disclosure only in accordance with the provisions of 10 CFR 9.19 of this chapter.
2. A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprized as to the basis for and effects of licensing or rule making actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.
 3. The Commission shall determine whether information sought to be withheld from public disclosure pursuant to this paragraph:
 - a. is a trade secret or confidential or privileged commercial or financial information; and
 - b. if so, should be withheld from public disclosure.
 4. In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:
 - a. whether the information has been held in confidence by its owner;
 - b. whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefore;
 - c. whether the information was transmitted to and received by the Commission in confidence;
 - d. whether the information is available in public sources;
 - e. whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.
 5. If the Commission determines, pursuant to paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine:
 - a. whether the right of the public to be fully apprized as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position; and

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- b. whether the information should be withheld from public disclosure pursuant to this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it shall be returned to the applicant.
 6. Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the document. The Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection:
 - a. under a protective agreement, by contractor personnel or government officials other than NRC officials;
 - b. by the presiding officer in a proceeding; and
 - c. under protective order, by parties to a proceeding, pending a decision of the Commission on the matter of whether the information should be made publicly available or when a decision has been made that the information should be withheld from public disclosure. In camera sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such in camera session will be made publicly available.
- C. If a request for withholding pursuant to paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be placed in the Public Document Room. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be placed in the Public Document Room and will be returned to the applicant: Provided, that information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph B of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.
- D. The following information shall be deemed to be commercial or financial information within the meaning of 10 CFR 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of 10 CFR 9.19 of this chapter:
1. Correspondence and reports to or from NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.
 2. Information submitted in confidence to the Commission by a foreign source.

- E. The presiding officer, if any, or the Commission may, with reference to NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and 10 CFR 2.740(c).

Appendix K

Procedures for NRC Personnel for the Protection of Sensitive Information Submitted to NRC

Discussion: 10 CFR 2.790 permits individuals submitting documents to NRC containing trade secrets, privileged or confidential commercial or financial information to request that such information be held in confidence (i.e., withheld from public disclosure).

Procedures:

- A. Upon receipt of a document accompanied by a request that the document be treated as proprietary information, the Division receiving the request will determine, within a reasonable time, whether the justification provided by the submitter supports a finding that the information qualifies for proprietary treatment and should be withheld from public disclosure. This determination will be made in consultation with the Regional Counsel or OGC.

If the staff determines that the material submitted qualifies for proprietary withholding, the staff shall prepare a written response to the requester indicating that the material will be withheld from public disclosure.

- B. The NRC staff should consult with Regional Counsel or OGC and management to ensure that ANY request for a document being withheld from public disclosure is properly resolved.

The staff shall ensure that neither the use nor the storage of such documents compromises its protected status.

- C. In cases where the staff determines that a submitted document does not qualify as proprietary information, either in whole or part, the submitter must be informed. This notification will state that the request for proprietary treatment is being denied, in whole or in part; describe the reason for the denial; and state that the document will be returned upon request provided that:

1. NRC does not need to retain the document for official action;
2. The document has not been “captured” by any pending FOIA request; and
3. The information was not submitted in a rulemaking proceeding that subsequently forms the basis for the final rule.

The staff will prepare the letter denying the request for proprietary treatment. The submitter must be so advised when a document is retained for any of the above reasons.

- D. The submitter must be informed of any denial of a request for proprietary treatment before:
1. The agency relies on the document as the basis for a final rule;
 2. The document is used in any substantive manner;
 3. The staff submits the document to an advisory committee; or
 4. The document is considered by the Commission in an open Commission meeting under the Sunshine Act.

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E. NRC staff having questions regarding the proper handling of sensitive information should contact their Regional Counsel or the OGC.

References:

September 12, 1994, Memorandum for the EDO to Office Directors and Regional Administrators on "Review of Proprietary Documents.

Appendix L

Documents Considered in the Preparation of this Report

This report incorporates and updates the guidance previously found in the NUREG reports, Regulatory Guides (RGs), Policy and Guidance Directives (P&GDs), and Information Notices (INs) listed below. Other NRC documents such as Manual Chapters (MCs), Inspection Procedures (IPs), and Memoranda of Understanding (MOU) were also consulted during the preparation of this report. *The documents marked with an asterisk (*) are considered superseded and should not be used.*

Table L.1 List of NUREG Reports, Regulatory Guides, and Policy and Guidance Directives

Document Identification	Title	Date
IN 89-25, Rev. 1	Unauthorized Transfer of Ownership or Control of Licensed Activities	12/07/1994
IN 97-30	Control of Licensed Material During Reorganizations, Employee-Management Disagreements and Financial Crises	06/03/1997
IN 93-100	Reporting Requirements for Bankruptcy	12/22/1993
IP 87103	Inspection of Material Licensees Involved in an Incident or Bankruptcy Filing	06/11/1997
IP 87103 App. B	Guidance for Inspection of Materials Licensees Who Have Filed for Bankruptcy	06/11/1997
P&GD 1-13, Rev. 2*	Processing Material License Applications Involving Change of Ownership	08/22/1994
P&GD 8-11*	NMSS Procedures for Reviewing Declarations of Bankruptcy	08/27/1996